

FINANCIAL SERVICES AND GENERAL GOVERNMENT APPROPRIATIONS FOR 2017

HEARINGS BEFORE A SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS HOUSE OF REPRESENTATIVES ONE HUNDRED FOURTEENTH CONGRESS SECOND SESSION

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U.S. GOVERNMENT PUBLISHING OFFICE

21-418

WASHINGTON: 2016

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FINANCIAL SERVICES AND GENERAL GOVERNMENT APPROPRIATIONS FOR 2017

THURSDAY, FEBRUARY 25, 2016.

CONSUMER PRODUCT SAFETY COMMISSION

WITNESSES

**HON. ELLIOT F. KAYE, CHAIRMAN, CONSUMER PRODUCT SAFETY
COMMISSION**

**HON. ANN MARIE BUERKLE, COMMISSIONER, CONSUMER PRODUCT
SAFETY COMMISSION**

Mr. CRENSHAW. I want to welcome our witnesses, Chairman Kaye and Commissioner Ann Marie Buerkle. This is your second time before the subcommittee, and we appreciate you being here today to testify. The Commission has an important job overseeing tens of thousands of consumer products used by almost all Americans every day. The success of the Commission is not only measured in public safety and education, but in the cooperation and engagement of all stakeholders, including consumers, manufacturers, retailers and Congress. Therefore, I would like to highlight the essential role that stakeholder engagement plays in the Commission's mission.

It is critical that the Commission lives up to its mission of protecting consumers through product recalls, educating the public on public safety hazards and ensuring the safety of consumer products; however, mission success means also engaging in cooperative relationships with the private sector to make sure that American commerce is not adversely burdened by unnecessary regulations.

This Commission has engaged in a series of highly controversial rulemakings without engaging impacted stakeholders. While I am encouraged to hear that progress is being made, particularly to address the issues surrounding recreational off-highway vehicles in a manner that is acceptable to all the parties, it concerns me that so often, the Commission's efforts to involve stakeholders are ad hoc and reactive in nature.

As I mentioned earlier, stakeholder engagement also means engagement with Congress. I have been crystal clear on my desire for the Commission to take meaningful steps to reduce third-party testing burdens on small businesses. For two consecutive years, this subcommittee specifically designated \$1 million for third-party test burden reductions, yet, it frustrates me that there has been no real tangible relief for small businesses, despite the amount of resources the Commission has been provided. Instead, and against the will of Congress, the Commission continues to pursue changes

to the detriment of the Commission's highly successful voluntary recall program.

The President's fiscal year 2017 budget request for the Commission totals \$130 million, or \$5.5 million increase over enacted. I would like to stress that in times of scarce resources, it is the utmost importance that the Commission prioritizes its activities to where the Commission has clear authority to act, and, wherefore, the need for consumer protection is the greatest.

However, I was encouraged to see the Commission re-evaluate its proposal to create a commission-led nanotechnology research center, and has, instead, formed a partnership with the National Institutes of Health on nanotechnology research. This seems to me to be a much more measured approach, and I am very interested to learn more about this initiative and the \$3 million requested for research into the chronic hazards of nanotechnology.

Once again, the Commission's budget request includes the authority to collect a user fee from importers in an effort to expand the import surveillance product program. The committee has rejected the Commission's proposal to collect an import fee for the past 2 years, and I am curious to learn if anything in your proposal has changed.

As you know, I represent JAXPORT in Jacksonville, Florida. I know firsthand the importance of surveillance of consumer goods, and I support the Commission's efforts to stop noncompliant products from entering our Nation's ports. But I have significant concerns with the lack of collaboration and discussion with the importers in this monumental policy change.

Chairman Kaye, you have said that one of your top priorities, when it comes to rulemaking, will be addressing the question of public safety hazards, so I look forward to hearing from you and Commissioner Buerkle on what the CPSC is doing to prevent the tragic and regrettable injuries from consumer goods.

So, once again, we welcome both of you all here today, and I look forward to your testimony.

I would like to turn now to the ranking member, Mr. Serrano, for any opening he would like to make.

Mr. SERRANO. Thank you, Mr. Chairman, and thank you for getting us this wonderful large room for our hearing today.

Actually, it looks very crowded, which is good.

I would like to welcome back with you, before the subcommittee, the Consumer Product Safety Commission Chairman Elliot Kaye, and my former colleague from the greatest congressional delegation ever in the Congress, the New York delegation, Commissioner Ann Marie Buerkle.

It is good to see you both, and I thank you for your service to our country. The Consumer Product Safety Commission is an independent agency responsible for monitoring the products sold or imported into the U.S. The work is crucial to ensure the safety, health, and well-being of the American consumers against faulty and dangerous products. The CPSC is requesting \$130.5 million for fiscal year 2017. This request is a \$5.5 million, or 4.4 percent, increase from appropriations enacted during the last fiscal year. This increase will be used to expand imports surveillance efforts at our

Nation's ports, carry out important work regarding nanotechnology research and development, and conduct hazard analysis and risk.

The risk assessments on the potential side effects of crumb rubber, a surface product made of recycled tires, has become a staple at playgrounds and athletic fields across our country.

In fiscal year 2015, nearly 80 percent of the consumer products recalled were imported products. The CPSC currently has the capacity to inspect 6 percent of U.S. ports and this year's request would expand that to roughly 7 percent. This means that the CPSC would be able to monitor roughly 65 percent of all consumer product import entry. As more products reach our borders from abroad, we must do everything in our power to ensure this vital agency has every tool and resource necessary to keep faulty goods and products away from our store shelves.

In addition, our colleagues in the House and Senate have recently sent letters to the Obama administration asking for answers on the safety of crumb rubber. Although a link to certain illnesses like cancer has not been established, more research must be conducted to ensure this product is safe for our children and athletes. The Commission's funding request will ensure more work is done to get these answers. I support the Commission's request for a modest increase in funding to address these issues, and I urge my colleagues to do so as well.

These new investments are necessary to ensure we stay on top of the challenges we face in our ever-changing economy. I hope my colleagues will recognize the Commission's important work during today's hearing. Our constituents have a reasonable expectation that the products they buy are safe and do not pose a threat to their families' health. We have a duty and an obligation to ensure that those expectations are met.

Again, thank you for joining us today, and welcome to our hearing, and for your service to Americans.

Mr. Chairman, I may add that you and I are the classic example of two people who don't necessarily agree on everything, but like each other. I mean—

Mr. CRENSHAW. Speak for yourself.

Mr. SERRANO. I could be nasty in two languages. If I was you, I would be—just accept it as it is.

Anyway, we are living proof of that, notwithstanding your comments.

But there is one thing here that I worry about, and that is that there are cost-cutting measures that we take, there are issues about the budget, and those are legitimate, and we may disagree, agree, that is another thing. When it comes to the products that come to our children's hands, to our store shelves, I think we can all agree that it is not government intervention; it is government making sure that another country is not sending us stuff that is not good for us. So I think we have to balance that as we look at the budget this year.

Thank you, Mr. Chairman.

Mr. CRENSHAW. Point well taken.

Now we are going to turn to our witnesses, Chairman Kaye and Commissioner Buerkle. If you all would limit your remarks to 5

minutes, that will give us more time for questions, and your formal statement will be submitted to the record.

So Chairman Kaye.

Mr. KAYE. Thank you, Mr. Chairman. Good afternoon, Chairman Crenshaw, Ranking Member Serrano, and the members of the subcommittee. Thank you for the invitation to speak again about the work of the United States Consumer Product Safety Commission and our budget for fiscal year 2017.

As I noted last year, CPSC's vital health and safety mission touches every home in some way each and every day. We believe we provide an excellent return on investment for the American people. We run a very lean operation, especially considering the thousands of different product categories in our jurisdiction from hoverboards to laminate flooring. And we cover them all with a budget in the millions, not the billions.

We are very appreciative of the continued bipartisan support for the Commission and our work. We saw this support in the overwhelming, nearly unanimous vote to pass the Consumer Product Safety Improvement Act of 2008, and we see it in the appropriation levels that Congress keeps providing.

These levels have allowed our dedicated staff to drive standards development to make children's products safer, to increase our enforcement effectiveness and to better educate consumers about product hazards, especially drowning prevention, brain safety, poison prevention, and TV/ furniture tipovers.

Our proposed budget reflects our staff's continuing efforts to carry out and enforce CPSIA-driven enhancements to consumer product safety. Unfortunately, not all of these priorities and requirements are achievable at our current funding levels. For that reason, we are pleased to see the President include in his budget certain important consumer product safety initiatives. These initiatives, if funded, will absolutely advance consumer safety, and, at the same time, provide real value to those in industry making or importing compliant products.

First, we are, again, seeking sufficient funding to achieve fully the intent of, and the direction in, section 222 of the CPSIA. Section 222 called on the Commission to develop a risk assessment methodology to identify, at our Nation's ports of entry, likely violative imported consumer products.

In 2011, we created a small-scale RAM pilot that has been a success. However, the pilot alone does not fulfill the direction and vision of Congress, and without full implementation, we will not be able to integrate sufficiently the CPSC into the much larger U.S. Government-wide effort coming online later this year to create a single window for import and export filing of all products.

If the CPSC can be integrated into the single window, we can transform Congress' vision of a national-scope, risk-based, data-driven screening at the ports into reality—a reality that would mean safer products in the hands of American consumers and faster entry for importers of compliant products.

Our proposed budget also includes increased funding to pursue a "Healthy Children At Home, At Play, and At School" initiative. This initiative includes research in two pressing public health concerns: the first, exposure to potential chronic hazards related to

nanotechnology in consumer products; and the second, which has already been mentioned, exposure to potential chronic hazards in crumb rubber used in artificial field turf and playgrounds. In fact, we were pleased to be part of a recent announcement along with our sister agencies, the Environmental Protection Agency, and the Centers for Disease Control and Prevention to begin a comprehensive study of crumb rubber in playgrounds and in artificial turf.

Chemical exposure to our children is a critical public health concern, and providing meaningful answers to parents on these questions is one of my top priorities. While the joint agency crumb rubber effort that is now underway is a huge step forward, we cannot solve this problem without Congress fully engaging on this topic as well.

Finally, as I discussed last year when testifying before you, one of the soundest investments we can make, and that I can make as chairman of this agency, is to continue to foster a culture of civility and dialogue both at the Commission and with our stakeholders. As the current campaign season sometimes reminds us, the political currents flow powerfully against reaching out and attempting a collaborative discussion on difficult policy questions.

Despite those pressures, and I cannot overstate how intense, and I might add, counterproductive, they are, I am pleased to work with a group of commissioners who share my views that there is a better and more productive way to solve challenging problems. There is no doubt that we have product safety challenges that must be solved, and I look forward to answering your questions about them. Thank you very much.

Mr. CRENSHAW. Thank you, Chairman.

[The information follows:]

STATEMENT OF CHAIRMAN ELLIOT F. KAYE
U.S. CONSUMER PRODUCT SAFETY COMMISSION



U.S. CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

STATEMENT OF CHAIRMAN ELLIOT F. KAYE
TO THE FINANCIAL SERVICES AND GENERAL GOVERNMENT SUBCOMMITTEE OF THE
U.S. HOUSE OF REPRESENTATIVES COMMITTEE ON APPROPRIATIONS
FISCAL YEAR 2017 BUDGET HEARING

February 25, 2016

Good afternoon Chairman Crenshaw, Ranking Member Serrano and the members of the Subcommittee. Thank you for the invitation to speak again about the work of the United States Consumer Product Safety Commission and our budget for Fiscal Year 2017.

As I noted last year, CPSC's vital health and safety mission touches every home in some way, each and every day. We believe we provide an excellent return on investment for the American people. We run a very lean operation, especially considering the thousands of different product categories in our jurisdiction from hoverboards to laminate flooring. And we cover them all with a budget in the millions, not the billions.

We are very appreciative of the continued bipartisan support for the Commission and our work. We saw this support in the overwhelming, nearly unanimous vote to pass the Consumer Product Safety Improvement Act of 2008 (CPSIA), and we see it in the appropriations levels the Congress has provided.

These levels have allowed our dedicated staff to drive standards development to make children's products safer, to increase our enforcement effectiveness and to better educate consumers about product-related hazards, especially drowning prevention, brain safety, poison prevention and TV/furniture tipovers.

Our proposed budget reflects our staff's continuing efforts to carry out and enforce CPSIA-driven enhancements to consumer product safety. Unfortunately, not all of those priorities and requirements are achievable at our current funding levels. For that reason, we were pleased to see the President include in his budget certain important consumer product safety

**STATEMENT OF CHAIRMAN ELLIOT F. KAYE
U.S. CONSUMER PRODUCT SAFETY COMMISSION**

initiatives. These initiatives, if funded, will absolutely advance consumer safety and at the same time provide real value to those in industry making or importing compliant products.

First, we are again seeking sufficient funding to achieve fully the intent of and direction in Section 222 of the CPSIA. Section 222 called on the Commission to develop a Risk Assessment Methodology (RAM) to identify at our nation's ports of entry likely violative imported consumer products. In 2011, we created a small-scale RAM pilot that has been a success. However, the pilot alone does not fulfill the direction and vision of Congress and without full implementation, we will not be able to integrate sufficiently the CPSC into the much larger US Government-wide effort coming online later this year to create a "Single Window" for import and export filing of all products. If the CPSC can be fully integrated into the Single Window, we can transform Congress' vision of a national-scope, risk-based, data-driven screening at the ports into reality – a reality that would mean safer products in the hands of American consumers and faster entry for importers of compliant products.

Our proposed budget also includes increased funding to pursue a "Healthy Children at Home, at Play and in School" initiative. This initiative includes researching two pressing public health concerns: (1) exposure to potential chronic hazards related to nanotechnology in consumer products and (2) exposure to potential chronic hazards in crumb rubber used in artificial field turf and playgrounds. In fact, we were pleased to be part of a recent announcement along with our sister agencies, the Environmental Protection Agency and the Centers for Disease Control and Prevention to begin a comprehensive study of crumb rubber in playgrounds and artificial turf.

Chemical exposure to our children is a critical public health concern and providing meaningful answers to parents on these questions is one of my top priorities. While the joint agency crumb rubber effort that is now underway is a huge step forward, we cannot solve this problem without Congress fully engaging on this topic, as well.

Finally, as I discussed last year when testifying before you, one of the soundest investments I can make as chairman of this agency is to continue to foster a culture of civility and dialogue, both at the Commission and with our stakeholders. As the current campaign season sadly reminds us daily, the political currents flow powerfully against reaching out and attempting a collaborative discussion on difficult policy questions. Despite those pressures, and I cannot overstate how intense—and I might add, counterproductive—they are, I am pleased to work with a group of Commissioners who share my view that there is a better and more productive way to solve challenging problems.

There is no doubt we have product safety challenges that need to be addressed. I continue

**STATEMENT OF CHAIRMAN ELLIOT F. KAYE
U.S. CONSUMER PRODUCT SAFETY COMMISSION**

to feel a real urgency to address persistent hazards such as window coverings and portable generators while also staying on top of promising emerging technologies such as 3D printers and wearable technology. I am hopeful we can continue to engage in a productive dialogue about the resources the Commission needs to match our expansive and critical health and safety mission.

Thank you again for the invitation to speak to you about the CPSC and the life-saving work undertaken by our staff. I look forward to answering questions you may have.

Mr. CRENSHAW. And now we will hear from Ms. Buerkle.

Ms. BUERKLE. Thank you, Chairman Crenshaw, and Ranking Member Serrano. Once again, I am delighted to be here in front of this committee and this subcommittee and talk to you about the Consumer Product Safety Commission. I just want to say to you that your close attention to our budget does make a difference and can truly affect our agency's behavior.

Your influence is well-illustrated by the progress we have made on Recreational Off-Highway Vehicles, known as ROVs. When I was here last year before this subcommittee, the agency was heading in the wrong direction, pushing ahead with rulemaking towards a mandatory standard. That was in spite of strong bipartisan congressional letters urging us to work with industry to develop voluntary standards.

The power of the purse was harder to ignore. Once it was understood that insisting on this mandatory standard was going to cost serious money, our strategy changed. Including language on this issue in our appropriation has just about clinched a good result for everyone. The industry did its part and worked hard to come up with a strong voluntary standard that will save lives and prevent injuries in the years to come. I thank you for your perseverance on this matter, and encourage you to remain engaged on all of our CPSC issues.

I also want to thank you for devoting some of our last appropriations to test burden reductions. I continue to be dismayed at the extremely slow pace of our efforts, but there does appear to be a glimmer of light at the end of the tunnel. Specifically, some of the 2015 funds that we spent on test burden reduction could finally produce some modest relief for manufacturers this year. It looks like virtually all of our 2016 funds will be used in the development of instruments that could test for the presence of phthalates more cheaply.

We are a country in fiscal peril. Our national debt is in excess of \$19 trillion. It is critical that every application of appropriated funds be transparent, and that the Federal agencies spending the American people's hard-earned tax dollars are accountable for their actions.

Excessive government spending also contributes to our Nation's woes in a second way. It feeds the regulatory state, whose cost is estimated as \$2 trillion annually, imposing an immense handicap on our American companies. The growing morass of regulation makes it more difficult and more expensive to do business in this country. The negative effects of such policies are felt throughout our American economy.

CPSC only accounts for a relatively small portion of our Nation's spending. However, because we have jurisdiction over approximately 15,000 types of consumer products, we have a disproportionate impact on the regulated community, consumers, as well as the marketplace.

I did not support the Commission's overall 2017 budget request of \$130.5 million, because, in part, it calls for a 5.5 percent increase—excuse me, \$5.5 million increase over current funding levels. I firmly believe our mission and our goals can be accomplished at our current funding levels. The total amount of the requested

budget increase is not my only concern. I also have reservations about how those funds will be spent. The agency's request for doubling from \$2- to \$4 million in nanotechnology research is of concern to me.

I respectfully submit that Congress should insist on accounting for the huge sums of money that have already been spent on nanotechnology across the spectrum of government before allowing any increase. CPSC has moved towards a more fiscally responsible approach to growth in the area of import surveillance. In terms of port staffing as well as technology, we are analyzing our needs more carefully and scaling back our prior requests.

To be clear, even on the smaller scale, I remain staunchly opposed to a user fee on imports. I believe that our operations are very different from other agencies who have been authorized to collect import fees. Given our more limited presence and role at the ports, I continue to believe that our imposition of fees could and would and should raise constitutional concerns.

Even apart from the fiscal year 2017 budget request, your oversight is needed to make sure our spending follows congressional intent. The Consumer Product Safety Act instructs us to keep consumers safe from unreasonable risks of harm. Yet, at times, our agency devotes our resources to risks that are exceedingly low. And when we find we cannot justify a mandatory standard under our statute, the agency sometimes can resort to bullying tactics that circumvent protections built into the rulemaking process.

The staff is vigorously pursuing the chairman's call for higher civil penalties, resulting in a threefold increase in penalties in fiscal year 2015 over fiscal year 2014. The agency has never withdrawn its proposal to make voluntary recall plans legally binding, and requiring some firms to admit their products are defective and to weaken protections that help ensure CPSC's statements are fair and accurate.

All of this creates well-founded uncertainty and anxiety within the regulated community and, worse, the fear of retaliation. They undermine the trust and cooperation we need from these same firms. In closing, I know it is a challenge to prioritize resources, especially when you have a large and vital mission as CPSC does. We all want consumers safe, but we must find solutions that avoid imposing unnecessary burdens and wasting taxpayer dollars.

Thank you. I look forward to your questions.

[The information follows:]



**Testimony of Ann Marie Buerkle
Commissioner
United States Consumer Product Safety Commission**

Budget Hearing – Consumer Product Safety Commission

Before the

**U.S. House of Representatives
Committee on Appropriations**

**Subcommittee on Financial Services
and General Government**

February 25, 2016

Chairman Crenshaw and Ranking Member Serrano, thank you for holding today's hearing on the U.S. Consumer Product Safety Commission's Fiscal Year 2017 Budget and for giving me the opportunity to testify before you on these important issues. Your close attention to our budget is welcome, and it can truly affect the agency's behavior.

Your influence is well illustrated by the progress we have made on Recreational Off-Highway Vehicles, or ROVs. When I was here last year, the agency was heading in the wrong direction—pushing ahead with rulemaking towards a mandatory standard. That was in spite of strong, bipartisan congressional letters urging us to work with industry to develop voluntary standards. The power of the purse was harder to ignore. Once it was understood that insisting on an unnecessary mandatory standard was going to cost a serious amount of money, the strategy changed. Including language on this issue in our Appropriation has just about clinched a good result. The industry did its part, and worked hard to come up with a strong voluntary standard that will save lives and prevent injuries in the years to come. I thank you for your perseverance on this matter and encourage you to remain engaged on all CPSC issues.

I also want to thank you for devoting some of our last appropriation to test burden reduction. I continue to be dismayed at the extremely slow pace of our efforts, but there appears to be a glimmer of light at the end of the tunnel. Specifically, some of the 2015 funds we spent on test burden reduction could finally produce some modest relief for manufacturers this year. It looks like virtually all of the 2016 funds will be going towards development of instruments that could test for the presence of phthalates more cheaply. That technology could end up reducing the burdens of third-party testing, but it will take a few more years before we know whether it can be commercially successful. I will do what I can to make sure we spend this money wisely, and I will keep you well informed on our progress.

We are a country in fiscal peril. Our national debt is in excess of \$19 trillion. It is critical that every application of appropriated funds be transparent and that the federal agencies spending the American people's hard earned tax dollars are accountable for their actions.

Excessive government spending also contributes to our nation's economic woes in a second way. It feeds the regulatory state, whose cost is estimated at \$2 trillion *annually*, imposing an immense handicap on American

companies. The growing morass of regulation makes it more difficult and more expensive to do business in our country. The negative effects of such policies are felt throughout the American economy. Increased burdens resulting from cumbersome regulations will be passed on to consumers by way of increased prices for goods and services. A business needing to spend more capital to cut red tape will have less money to spend on things like safety innovations, research and development, creating new jobs, or increasing wages of existing employees.

CPSC only accounts for a relatively small portion of our nation's spending. However, because we have jurisdiction over approximately 15,000 different types of consumer products, we have a disproportionate impact on the regulated community, consumers and the marketplace.

I did not support the Commission's overall 2017 budget request of \$130.5 million, in part because it calls for a \$5.5 million increase over current funding levels. Nevertheless, I do not believe that any increase in funding is necessary to carry out our mission in the coming fiscal year. I firmly believe our mission and goals can be accomplished at current funding levels and that a carryover budget from FY2016 would give us the resources we need to be successful in FY2017.

The total amount of the requested budget increase is not my only concern. I also have reservations about how the funds would be spent. In particular, I question the need to double the agency's spending on nanotechnology research from \$2 million to \$4 million per year. While this is far less ambitious than last year's request, I still have not seen evidence that our current spending on nanotechnology exposure is producing valuable results. I respectfully submit that Congress should insist on an accounting for the huge sums already spent on nanotech across the government before allowing any increase.

I am pleased to see CPSC move towards a more fiscally responsible approach to growth in the area of import surveillance. In terms of port staffing as well as technology, we are analyzing our needs more carefully and scaling back our prior requests. To be clear, even on this smaller scale, I remain staunchly opposed to a user fee on imports. I believe that our operations are very different from those of other agencies who have been authorized to impose and collect import fees. Given CPSC's more limited

role at the ports, I continue to believe that our imposition of fees would—and should—raise constitutional concerns.

Even apart from the FY2017 budget request, your oversight is needed to make sure our spending follows Congressional intent. The Consumer Product Safety Act instructs us to keep consumers safe from unreasonable risks of harm. It is clear that Congress never intended us to eliminate all risk. All too often, however, the agency devotes our resources to risks that are exceedingly low. And even when it is clear that we cannot justify a mandatory standard under our statutes, the agency sometimes resorts to bullying tactics that circumvent the protections built into the rulemaking process. These actions undercut the claim that CPSC is a “data driven” agency.

The current CPSC administration is taking other steps that damage relations with manufacturers and retailers. The agency is vigorously pursuing the Chairman’s call for higher civil penalties, resulting in a three-fold increase in FY 2015 over FY 2014. The agency has never withdrawn its proposals to make voluntary recall plans legally binding, to require some recalling firms to admit their products are defective, and to weaken protections that help ensure CPSC’s statements about specific products are fair and accurate. And the agency has thrown a pall of uncertainty over the “Retailer Reporting” program, which has been a rich source of incident data for a decade and prompted more than a hundred safety recalls.

These actions and inactions create well-founded uncertainty and anxiety within the regulated community, and worse, a fear of retaliation. They undermine the trust and cooperation we need from these same firms when it comes to voluntary standards and other safety advances.

In closing, it is challenging to prioritize resources, especially when you have as large and vital a mission as CPSC. We all want to keep consumers safe, but we must find solutions that avoid imposing unnecessary burdens and wasting taxpayer dollars.

I welcome your questions.

Mr. CRENSHAW. Well, thank you. And to the members before you got here, we announced that, as you all may know now, we are in recess, probably till about 3:00 or a little thereafter, and we have a full house today, so we will observe the 5-minute rule. So everybody will have a chance to ask their questions, and I will start by asking a question about third-party test burden reduction.

You mentioned, Commissioner, that you are seeing some progress. I mentioned in my opening statement that I am concerned that I haven't seen much progress. So it is encouraging that there may be some progress being made. As you all know, we have appropriated \$1 million each year for the last 2 years to help in that. This year, I notice you didn't ask for \$1 million to continue that. But maybe, Chairman Kaye, can you tell us some of the things that you all have done to reduce that burden.

One of the things we did in the omnibus, we asked you to submit a report about that, and then I noticed not long ago, it has been a couple of years, I guess, you wrote that you had three ideas that would provide a substantial amount of third-party testing relief. So if you could highlight those and tell us the timetable. So just take a minute to tell us a little bit about that.

Mr. KAYE. Sure, absolutely. Thank you, Mr. Chairman, for the question. As Commissioner Buerkle mentioned, I do think we are seeing progress. It has been slow for all of us, but we also recognize that until the Congress stepped in in the last fiscal year, which would have been December of last year, and appropriated the \$1 million, it was really running up against our core safety mission to try to allocate the resources that would have been necessary, and we are taking our lead from Congress as well, which told us to keep our eye on our core safety mission.

So getting that money has made a big difference. We immediately turned it around, and we focused on two areas. The first—and this is based primarily on stakeholder input, especially from our small business ombudsman who, unfortunately, recently left the agency, but who had done an excellent job of really cataloging what would provide the most relief to the small business community and give us the most bang for the buck.

So the first area we have focused on is what we call determinations, and that means trying to identify materials, whether we are talking about wood or any other type of material, cloth, that can be used without needing to be third-party tested. Can we go out there and survey the marketplace and get comfort that there will not be any type of the harmful chemicals that we regulate at violative levels in those products? Can we go out and tell the communities that are using them, you are safe to use them without third-party testing them?

So we have been working to expand our list of determinations. We have done three rulemakings this year that relate—well, two that relate to determinations, and one that relates to textiles, to try to provide more clarity for the regulated community.

The other area that we have focused on is screening technologies. Right now, if you go to the ports, and I hope we can do this in Jacksonville, you will see that our inspectors have handheld XRF devices where they can zap a product and tell immediately whether it has certain heavy metals in them. We need a similar type of

technology for screening purposes for phthalates, the plasticizer that is added to make products softer. There is no—that is the most expensive test, phthalates testing, and right now it requires wet chemistry. It involves grinding the product down, adding it to a solution, and then putting it through a scanner.

We are working on getting out funds to try to accelerate the development of a handheld device that would allow for this similar type of screening, and I believe Commissioner Buerkle was actually briefed on it recently and saw some of the technology that is in play. If that can come online and if our investment that you provide with that money can come online, that would make a huge difference in driving the cost down.

Now, the last part of it is, Congress was clear, it said reduce third-party testing costs consistent with assuring compliance. So we have to remain vigilant in making sure that any changes we make don't change the likelihood of the underlying product becoming more harmful.

Mr. CRENSHAW. Thanks for that.

Mr. Serrano.

Mr. SERRANO. Thank you. Thank you, both of you, for being here.

Chairman Kaye, your budget request, your \$5.5 million increase, how does the total request related to fulfilling the Commission's mission? I know that the Republicans have a concern about overregulating, but with the Commission having to, first, go to voluntary standards I am very concerned about underprotecting our consumers. So how does this budget play with that?

Mr. KAYE. Thank you, Congressman Serrano. I don't think that anyone should have concern that the Commission is overregulating. My concern is that because of the limited funds that we have been provided, we do not have the ability to really stay on top of emerging hazards in particular. And to answer your pressing questions, as I mentioned, such as crumb rubber, and that is one of the reasons why we have asked, as part of the President's budget, for additional funds to address some of these emerging technologies.

It seems to me that this is the way the system is supposed to work. And you look at something like nanotechnology, you have a group of scientists across the scientific community, especially in the government, who identify an emerging hazard concern, nanoparticles that come off of consumer products, the belief is that they appear to act like asbestos, and they get embedded in children's lungs. When that has been identified through this process, and we come to the Congress and say, this is a concern that we have, it seems that is exactly why we have these hearings.

Congress wants to hear what the community, the scientific community, in particular, which doesn't have a partisan bent, what are the scientific concerns that are coming online that we should be addressing? It seems to me it is far more efficient for Congress to allocate money at this juncture to address this concern before it becomes a full-blown public health crisis, and then, of course, it is much more expensive to address.

So I feel like us coming for the second year in a row to ask for this nanotechnology money is exactly the way this system should work, and it is consistent with us trying to do our best to highlight

those critical areas that we feel like we need Congress' assistance to stay on top of.

Mr. SERRANO. Now, both the chairman and I mentioned an issue that is of concern. Then, of course, there is the issue of, what is it, hoverboard? Which one is the—presents the more immediate danger, or at least which one presents a more challenge to you to figure out what the safety standards should be or not be?

Mr. KAYE. So I think they both present different challenges in different ways, and I will explain that. Hoverboards clearly, at this juncture, appear to present an acute hazard, you either are going to have a fire concern or a fall concern. The injury is immediate. The concern with crumb rubber is a concern about a chronic hazard, long-term exposure to children over time. Both of them are extremely difficult, at our current funding levels, to be quickly responsive to.

I would say hoverboards, because you are talking about complex electronic systems, and though we, of course, have excellent electrical engineers, we do not have a deep bench of excellent engineers. We have small staff of electrical engineers, and to pull them off of what they are doing, which we had to do and have them work 24/7 to try to take these devices apart, means other critical work is not getting done that we had already planned on getting done.

Coin cell batteries, children swallow them; they end up burning holes in their esophagus; they are fatal, our electrical engineers are trying to get to the bottom of that.

We had to pull them off that type of work to address hover boards. If we had a deeper bench, we would be able to be much more responsive.

And, similarly, one of the reasons why we were so eager to have a larger Federal effort on crumb rubber, we can't handle that alone. We have got six or seven toxicologists, which is what EPA can throw at a smaller problem. That is our entire toxicology division. We are—our mission is more than 15,000 different types of consumer products. We are not built as an agency, from a staffing perspective, and a research perspective, to be on top of those in a way that the public expects us to be.

Mr. SERRANO. Very quickly, Mr. Chairman, to rule—in one sense is, would it be unfair for me to ask this question, because one country sends us more products than the other, or percentagewise, what country presents our biggest challenge to us in terms of having to return items or take them off the shelf?

Mr. KAYE. So four out of five recalls come from imported products and, not surprisingly, a very large percentage of those are from China.

Mr. SERRANO. Okay. So it is an unfair question in a way, because it is a loaded question, but it is what it is, right?

Mr. KAYE. Can I just add a teeny bit to that? I think what is counterintuitive is that the Chinese Government is actually very helpful. When we approach them with actionable information, they are very eager to try to stop manufacturers from doing what they are doing. And so we have built up—we actually have a presence on the ground right now in China. We have full-time staff there, and we have built good relationships to try to deal with these issues, but, again, we don't have the type of depth and resources

to really have that much more of a relationship and attack that many more different areas to try to prevent them from coming in the country.

Mr. SERRANO. Mr. Chairman, using CIA agents on the floor, it is kind of an overkill over in China, but anyway—

Mr. CRENSHAW. Four out of five.

Mr. SERRANO. Thank you so much.

Mr. CRENSHAW. Mr. Graves, and then Mr. Quigley.

Mr. QUIGLEY. Thank you, Mr. Chairman. Mr. Chairman, good to see you.

Mr. KAYE. Yes, sir.

Mr. GRAVES. Thanks for returning.

Chairman, I have a question. You have referenced several times crumb rubber, and I want to talk about that just a little bit. Quite frankly, I follow this with a bit of interest. It seems somewhat of a coordinated effort between CDC, EPA, and then your Commission to address these concerns. And you have made several statements since the launch of this effort.

My concern more than anything is that as you go through this process decisions are made based on science and sound research and unbiased opinions, and I ask this question to just get a commitment from you and the Commission. This issue is of particular interest to me, because I come from a very, very small town, only a handful of businesses in the town but one of them happens to be a company which recycles tires. And then I have three children in high school, a wife who teaches as well, and in our district, there are many—many products that use crumb rubber as well as manufacturers and businesses that install them. So it is a little bit of an interest for me. It is very important in a lot of different ways, and I know your passion is for protection, and I respect that.

But I would like to have the commitment from you that as you go through this investigation, that you are following all the appropriate scientific protocols and not succumbing to rhetoric or any other kind of biased opinion or hyperbole, that you are involving all stakeholders and following the science where it leads as you come to that conclusion.

So my question is really pretty simple, can we have that commitment from you to the committee that the focus will not be on the hyperbole and other rhetoric out there but on the science?

Mr. KAYE. Absolutely, Congressman. That is an easy commitment to make, because it is consistent with the way I operate. You referenced decisions or statements that I have made on the subject. I have never, and I would be surprised if you can point to one, that has declared that these products are unsafe or declared that there is a hazard. I have been very careful to say that parents have raised concerns. I think—and I am a parent as well, of two young boys, parents deserve answers, but that doesn't, in any way, indicate that I believe I know what the answer is. I don't.

And one of the reasons why I pushed to have EPA and CDC take the lead on this and work with us is that we could collectively come together and provide those answers. I have no interest in hyperbolic rhetoric associated with this. I just want to know what the answer is. But I think all—and, by the way, the commitment extends to, of course, making sure that all stakeholders are involved.

This has been one of the unique areas where I saw that the House Commerce Committee had written, both the majority and the minority, written to the EPA to say, we would like answers. And even the industry has said they are happy that the government is now studying this. I just hope that there is room that if the science is legitimate, some side is not going to be happy with the answers, because people have become very polarized—I just hope that folks can accept whatever the answer is, as long as it is fact-based, even if it doesn't come out the way they hope it does.

Mr. GRAVES. And if I could just add one thing. I would love your feedback on it, Commissioner. And I appreciate your approach because it is important for everyone to recognize as you said, in your press release, that there has been no determination of any harmful effects. And so I appreciate you saying that, but there seems to be some effort to find harmful effects. And, so thank you.

Ms. Buerkle.

Ms. BUERKLE. Thank you. Thank you very much. I do want to comment on this, because I think it is very important for the record to establish that to date, there has been no change in the science, that there is no causation between cancer and crumb rubber. So we are starting where we left off.

And the NBC news report was what kind of, I think, got this whole issue going. And I think it is important for us as an agency not to react to the media. They are—they are trying to sell stories. We need to base our—whatever we do on science and facts, and make sure our approaches are reasonable, that is course we follow. I do have an article I would like to submit for the record on crumb rubber, and it lists a whole body of research that has been done on this topic, because to date, there has been no—nothing that establishes causality.

[The information follows]



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Mr. GRAVES. Thank you. Thank you, Mr. Chair.

Mr. CRENSHAW. Mr. Quigley.

Mr. QUIGLEY. Thank you, Mr. Chairman.

Let's talk a little bit more about hoverboards. The Commission sent out a notice to retailers and manufacturers, I think it was last week, asking to voluntarily recall hoverboards off the market until they meet voluntary safety standards. Obviously, you go to Wal-Mart or Toys-R-Us, they are still for sale. What is next on the— in the timeframe and the process here to look at these and decide if there needs to be a mandatory recall?

Mr. KAYE. So what is next is that we have more work to do. We have asked our technical staff to do what we call a product safety assessment, or a PSA, to give us their unbiased technical view to assess whether or not they believe that there is a defect that poses an unreasonable risk of injury or death. We are waiting for them to conclude that process. Once they do that, what we did put in that notice was that we could deem these products, or consider these products to present an imminent hazard, and that would allow us, under section 12 of the Consumer Product Safety Act, to go into court and, in essence, ask for an injunction, or seek a mandatory recall.

So we have, at this point, kept all options on the table. We have been aggressive in both trying to identify the issue, working with Underwriters Laboratories which had come out with the Standard 2272 of electrical components in self-balancing boards, and we feel like so far we have been encouraged by the action of many of the retailers, you mentioned two of them, that actually have stopped sale in the last day or so. And we think that is a responsible action to take at this point; stop sale, have your products tested. If it complies with that underlying standard, you are good. If it doesn't comply, then I think it is incumbent upon those companies to begin to initiate a recall process, come to us with a recall proposal.

Mr. QUIGLEY. Did you say that Toys-R-Us has stopped selling these?

Mr. KAYE. I have read that publicly. That is correct.

Mr. QUIGLEY. And Wal-Mart?

Mr. KAYE. I have read that as well.

Mr. QUIGLEY. I am sorry, go ahead.

Mr. KAYE. So we think that if you test it and it doesn't comply, you should start to come to us with a recall proposal to take these products off the market.

Mr. QUIGLEY. Can you guesstimate a timeframe before your folks are done with their analysis?

Mr. KAYE. I would say within the next week or two is my hope.

Mr. QUIGLEY. Okay. Do you have something else to add? I am sorry.

Ms. BUERKLE. No. It is just with regards to hoverboards, it has been a complicated issue for the agency, because it may have been that the first hoverboards that came into this country were compliant and were safe, but as time has gone on and the increase in popularity, a lot of the issues had to do with component parts coming from many manufacturers; it was difficult to trace back the products to the manufacturers, and so it has been a complicated issue that the agency has really dedicated a lot of resources to.

Mr. QUIGLEY. Thank you. Last point, recalls, Consumer Federation of America informed us that for all the recalls, only about 30 percent of the products are actually recalled; in other words, 70 percent of the folks are still out there with using products we assume that they don't know. How do we do better informing them about this? Or do they just not pay attention if they do know?

Ms. BUERKLE. I think looking and measuring the number of products returned isn't really—it is one way to measure recall effectiveness, but recall effectiveness is another complicated issue. Because if a product is very inexpensive and it was, you know, in a McDonald's lunch or it was just something that—

Mr. QUIGLEY. McDonald's what?

Ms. BUERKLE. In one of their Happy Meals, what a parent will do is throw it out.

Mr. QUIGLEY. Not so happy.

Ms. BUERKLE. Not so happy. The parent will just toss it out. They are not going to take that product and go back to McDonald's. So the cost of the product, the age of the product, being able to adapt that product and maybe comply with the safety issue—

Mr. QUIGLEY. But did you—what do you all do to try to gauge what actually—how effective recall is or how many people hear you?

Ms. BUERKLE. Well, we are paying closer attention as an agency to measure recall effectiveness. Yesterday in our ops plan, I made a motion that we start to measure the progress reports that a recalling company establishes as a part of the recall so we can maybe look more scientifically—not scientifically, but more systematically at the data coming in to try to measure it. But I think there is a lot of ways to measure recall effectiveness. One of them has to do with injury. If you look at a product—and these progress reports would help us do that. If there are no issues or no incidents post recall, whether we get that product back or not, that is a good indication to us that that recall was effective.

Mr. QUIGLEY. Thank you, Mr. Chairman.

Mr. CRENSHAW. Mr. Rigell, and then Mr. Bishop.

Mr. RIGELL. Thank you, Mr. Chairman. And to our two witnesses today, thank you. Thank you for your service. Let me first say that the Consumer Product Safety Commission is absolutely essential, and I think it is just right up there with the FDA and other agencies, and I appreciate the work that you do.

We are trying to—all of us are trying to get it right to increase the efficiency and the effectiveness of the Commission. And I want us to look at one particular aspect, and, that is, how we are leveraging the private sector in this.

The compression that we are seeing on discretionary spending is going to continue, as far as I can see, into perpetuity, for a host of reasons that I won't get into here. But even if we are at our very best from the administration and Congress and the days ahead, there is still going to be pressure on the discretionary side of the budget. So even your—those who follow you will be—will be struggling with this and those who follow us, I believe, will be struggling with these very issues. But I was concerned, as I looked in Commissioner Buerkle's testimony on page 4 of the current—CPSC administration is taking other steps that damage relations with man-

ufacturers and retailers. And, first of all, look, I have been in business a long, long time, and I know that there are some business people who are—have ill intent, and if they can, you know, kind of sell a substandard product and knowing that we could hurt someone, they will do it.

And so, I am not saying—certainly not turn this all over completely, but I have also seen examples where—and I have been part of it too—of where industry has really leveraged—I think it took a government dollar and maybe made it—stretched it out to maybe \$4- or \$5. Because the industry itself, the good people, the good men and woman who are in the right companies, they really don't like the ones who are getting things—an increase in their profits the wrong way.

So could you just unpack that just a little bit, Commissioner Buerkle, about how—maybe we are not leveraging it as much. It is not a gotcha moment here. I am just trying to see if we can do a better job of leveraging the private sector in all of this.

Ms. BUERKLE. Thank you very much. So, my concern with the way we treat industry's businesses, I have been at the agency 2-½ years, and I can honestly say to you, as I have traveled and visited several businesses throughout the country, all—across all industry lines, they want to comply with the regulations. The regulations are complex, and the regulations can be vague. So, for instance, we talked about burden reduction. We have to assure compliance with reporting responsibilities that the person reporting a possible defect or violation of a regulation, if it "could present" a product hazard, it is vague. So sometimes that is in the way of it. But what we also have is some hostility inside of the agency in terms of there is almost a supposition that a party is guilty until they prove themselves innocent. Most companies want to do right.

And I feel the Consumer Product Safety Commission should be working with and engaging with companies showing them the way. Complications, and it is not that they are just dealing with our regulations; they are dealing with—their municipality, their State, their county, and their State regulations, and then our regulations. They have a maze of regulations to go through, and we should be helping them. The threat of civil penalties, higher civil penalties, is significant. It looms large over anyone who has a reporting responsibility.

Someone can come to us with a Fast Track and we have the benefit of 20/20 hindsight, we say no, that should have been reported to the agency sooner, and so we are going to slap you with a \$4, \$5-, \$6 million penalty. That discourages, really, a spirit of cooperation.

Mr. RIGELL. Well, let me ask Chairman Kaye. In fairness, you know, I don't see this as a part of an issue. Maybe it is, but I don't really see it as such. I mean, is there a demonstrated track record here? Have there been—can you look back at the last year and say, well, look at what we have done, we have taken this industry and we have leveraged their strengths and brought them in, and maybe there is a working group that is helping us on these different projects?

Is there evidence that we are better leveraging the private sector and the good companies that are trying to put our good products

in, and at the same time, always knowing, it is not—you know, you are not just in some type of real friendship here. I mean, it is just collaboration, but you are always watching over them, every company, at all times, I get that too. So how does the past year look? I mean, have you got evidence for us to look at and consider?

Mr. KAYE. I do. And I think a perfect example is what we did, Congressman, on our proposed electronic filing of data elements associated with the single window that I mentioned during my opening statement. So the government is going to have, across the board, 47 agencies at the ports, one window for import and export as opposed to 47 different windows. All the agencies that are participating in that are stress testing their electronic filing systems. We originally proposed to have 10 data elements, 10 different sets of data, and by significant stakeholder engagement with the type of companies you are talking about, we cut that down to five, and they applauded us for that effort. But I so appreciate the way you asked your question, because it is so rare that there is an acknowledgement that there actually are companies out there that do have bad intent.

Mr. RIGELL. No question. Right.

Mr. KAYE. And when we have civil penalty cases, I look very closely at that. Is this a fair exercise of our jurisdiction over those companies? And one of the areas that I have tried to prioritize at the agency is doing a better job at discerning those companies that are playing by the rules and those companies that are not.

Mr. RIGELL. Thank you for your testimony. And I thank the chairman.

Mr. CRENSHAW. Thank you.

Mr. Bishop, and then Mr. Womack.

Mr. BISHOP. Thank you very much, Mr. Chairman, and thank you, both, for your attendance here today. I want to touch on two issues, one is the import surveillance program, and the other one is import of hardwood. According to your request in fiscal year 2017, you said that 80 percent of your recall of consumer products was imported from outside of the country, and you were requesting an increase of \$3 million to support 15 of staff, as well as equipment for the employees and related costs, but you still project to only cover 7 percent of U.S. ports, which comprise approximately 65 percent of all consumer products import entry lines.

With your requested funding and staffing, assuming that you got it, approximately how many consumer products would still go unmonitored by CPSC at the ports of entry? And, of course, as a follow-up to that, what do you think the resources, equipment, personnel, would it take for you to be comfortable that the majority of dangerous products were turned away at the ports of entry?

And, finally, what are the most problematic ports of entry, and do you have adequate resources to substantially assume the full dangers to consumer products there?

Mr. KAYE. Thank you, Congressman. And I apologize you are on our side of the table. I don't know what you did to end up next to us, but we are pleased to have you on this side.

So, yes, we do currently cover far less than 100 percent——

Mr. BISHOP. You are on the side of the consumer, so——

Mr. KAYE. I appreciate that. I definitely feel that we are.

We believe that it makes the most sense, it is far more efficient to catch products at the borders before they get into the United States, they are dispersed into the stream of commerce, and it becomes much more challenging to try to collect those via recall. And as Congressman Quigley mentioned, recall effectiveness is not very high. So if we can get them at the ports before distribution, we think that is far better, and we think that is a good investment for Congress.

The way we screen right now, is we take the data that is provided to U.S. Customs and Border Protection, the information that has to be filled out by importers to identify which consumer line of entries these products fall under. It is just basically tariff codes. And we take those tariff codes, and we run it through a pilot system that looks at the certain subset that is likely to give us the highest risk products. It is not everything, just the highest risk, and then we target off of that, both nationally and at individual ports. As you mentioned in your testimony as in your question, if we can get the resources that we ask for as part of the next budget, we will be able to get up to about two-thirds of looking at those consumer product tariff codes that are in our jurisdiction. I don't think that is good enough, and I don't think for the American people that meets the expectation that the United States Government is standing watch at the ports.

As our proposal indicates, we are seeking a permanent funding mechanism to try to get up closer to that 100 percent. My estimation is that we are talking about \$36 million to—on an annual basis to try to do that, and that would cover far more personnel at the ports, and personnel on the back end at our testing facilities to handle the samples that come in, as well as the IT systems to be built to bring it all together.

Mr. BISHOP. Thank you. Let me—do you have anything to add?

Ms. BUERKLE. I do want to talk about import surveillance, because it is important. However, I will say that currently, our risk assessment methodology that we have is looking at all of the product coming in at all of the ports. The issue we have is not the technology so much as the people, and if we had additional people to review the data, it would be far more effective.

Mr. BISHOP. Thank you. With regard to hardwood, you have been investigating the formaldehyde emission levels in wood flooring products, largely imported from China. And, of course, you know one of those companies has been the center of the issue, but any imported wood flooring products could potentially come from any country anywhere.

The district that I represent in the southwest Georgia contains millions of acres of forest land, a reduction of lumber, and my constituent companies, including wood flooring companies, dutifully comply with the strict standards regarding product safety. So how is the Commission ensuring that safe U.S. products are not supplanted by cheaper, imported alternatives, which contain hidden dangers to our families across the country?

Mr. KAYE. Sure, I am happy to take that.

So we, of course, try not to discriminate between one company or another. And, in fact, there is no mandatory standard, mandatory Federal standard yet, for hardwood flooring. That is coming

down the pike from the EPA in response to a law that was passed by Congress. If that is, in fact, enacted, that rulemaking, then EPA would be enforcing it.

Right now, we are approaching these products as being potentially defective. There is the California standard, which does set an emissions level, when we are using that as the basis for our investigation into that particular company, our belief is that if it is being produced by your constituents, we don't have the concern that exists when it is coming from China.

And this goes to what Congressman Serrano was asking about earlier, is that the sourcing of the products makes a huge difference, and so if we had the resources, and we had the ability to get further up the supply chain, I think that we could do a better job of making sure that those products that are affecting your constituents are not supplanting their work, basically, their sales.

Ms. BUERKLE. If I could add one thing to that, because this is consistent with the theme of our agency reacting rather than being proactive. When it comes to that issue, once again, that was an issue that was raised by CBS. It wasn't something that we saw data, we saw science. And so the issue was brought up within the media. And I think it is very important for us as an agency, again, to look at our data and look at our science, and not act in a reactionary way. And I think that goes to the crumb rubber and several other issues. We can't be knee jerk. We need to be scientific and data—

Mr. BISHOP. You found that formaldehyde and that imported wood flooring was toxic, did you not?

Ms. BUERKLE. Well, we have not made our final findings at the agency, but—

Mr. BISHOP. You had some preliminary findings, right?

Ms. BUERKLE. To date. It does not indicate that there is a grave concern for a link to cancer.

Mr. CRENSHAW. Thank you, Mr. Bishop.

The floor just announced we are going to vote at 3:15, so we have three remaining questioners. We should have ample time for one round of questions. So let's go to Mr. Womack, then Mr. Yoder, and then Mr. Amodei.

Mr. WOMACK. Thank you, Mr. Chairman.

Mr. Chairman, Ms. Buerkle, it is good to see you again. You said a minute ago, Mr. Chairman, that—and I don't want to put words in your mouth, but something about the fact that you base your research on data, on science, that is kind of what drives the Commission to do its job and to do it effectively. But it seems to me that there is a kind of a breach in your regulatory process in that instead of relying on data or science, that sometimes you and/or members of your staff, instead of working with the manufacturers or the importers on product improvement, that sometimes you end up at a retailer, and you ask, if I could use that word, ask the retailer, to stop selling lawful and legal products. Is that a tactic that is in play at the Consumer Product Safety Commission? Is that what you do?

Mr. KAYE. So we absolutely do engage the retailers, and I think hoverboards are a perfect example, because there is no U.S. presence. There is no U.S. manufacturer that we can go to.

Mr. WOMACK. Okay. Well, let's stipulate to hoverboards. Let's talk window coverings for a minute.

Mr. KAYE. Okay.

Mr. WOMACK. So do you, with a wink, encourage retailers to stop selling corded window coverings?

Mr. KAYE. So there is no wink involved. I absolutely have met the CEOs and talked to CEOs of major retailers, and I said some of your colleagues, Target, Ikea, decided on their own to only sell products that do not kill children. Are you comfortable moving in that direction? And they—

Mr. WOMACK. Mr. Chairman, how would you call that anything but intimidation? You are the heavy hand of government standing in a retailer's office basically intimidating them to the point where they stop selling a product that is on their shelves. How do you justify that?

Mr. KAYE. Well, I don't know if many of them are intimidated, because many of them have not stopped selling their products. And so we have had conversations with them, and some have decided to stop selling them, and some have decided—in fact, none of the ones that I have talked to has actually decided to stop selling it. Three of them have said that in 3 years, they will phase out certain products, and the rest have made no determination whatsoever and continue to sell.

Mr. WOMACK. So let's go back to the science or the data. What—what is the data telling us? Isn't it like from products made, say, between the mid-'90s and, say, the end of the first decade in the millennium that window covering, fatal strangulation on corded window coverings was like 1 in 100 million? Is this an area—is that true?

Mr. KAYE. I don't remember exactly what rate is, but when we look at—

Mr. WOMACK. Is it close?

Mr. KAYE. It could be, but can I actually explain how we go about assessing risk?

Mr. WOMACK. Let me, because we have got limited time. Let me just get to the essence of my question, is if, in fact, science and data drive your agency, drive you, drive your agency, then it would seem to me that this, on window covering specifically, it has become more of a personal crusade rather than a data or science-driven need for our country. And so that is why I say, I just—I find it incredible that anybody associated with the Federal Government would be in the presence of a retailer selling a lawful product where some rule is not in effect that would render a product unlawful to be sold on a shelf like at a Wal-Mart or a place like that, and to be suggesting that they don't sell it when it is the agency that could eventually level civil penalties against them. And that is—help me understand how that is a responsible way to conduct business?

Mr. KAYE. So let's talk about the data. 30 years' worth of, on average, a child, once a month, being hanged to death by these products. That is data. That is very meaningful data to me. When does that end?

Mr. WOMACK. Well, did the CPSC ever come with a standard, a reasonable standard that could be applied to the window covering

market? And if it didn't, if it didn't because it couldn't, based on the data come up with a reasonable standard, then why would you tell a retailer to quit selling stuff?

Mr. KAYE. But we only started our rulemaking about a year ago. We have been working for 30 years in the voluntary standards process following Congress' direction to try to get industry working with them collaboratively to address this problem, and every time our technical staff, who have no dog in the fight from a political perspective, come with their suggestions to reasonably address this hazard, they are shut down. I think after waiting 30 years of one child a month, I don't think that is moving too quickly.

Mr. WOMACK. Does CPSC have the votes for such a rule?

Mr. KAYE. I have no idea. We voted 5-0 to start the rulemaking. We haven't had a vote since.

Mr. WOMACK. Ms. Buerkle, let me appeal to you. I mean, look, obviously, I have got a major retailer in my district, and it is the source of thousands and thousands of jobs, and they sell lots and lots of products, and I agree with you that the last thing a company wants to do is be selling products that are—that are a risk to the general public.

I mean, let's face it, they also have legal departments that spend a lot of time and money trying to defend themselves on these kinds of things, but is this—is this action by the Commission that, I guess, the chairman has admitted to doing, encouraging retailers not to sell lawful products, is that something that you think is—is justified within the agency?

Ms. BUERKLE. I do not think it is justified, and I think one of the things the agency has to do is consider risk. And so if we just pick and choose and assess without assessing risk, we are going to find ourselves going down a lot of inappropriate roads, and I think window coverings is one of them. The risk is 1 in 100 million. That doesn't justify rulemaking. That doesn't justify banning corded products.

I said this to the chairman, and then because he has been frustrated with window covering companies, the manufacturers of it, he has approached the retailers. And in my humble opinion, I think what we are doing is we are circumventing the rule process. The Administrative Procedure Act makes it clear. There is a way to promulgate a rule, and this isn't it, but you achieve the same end, and that concerns me greatly. The risk doesn't exist here.

Mr. WOMACK. I know I have used all of my time on this particular question, but I am gravely concerned about the tactic that we have discussed. Thank you, Mr. Chairman.

Mr. CRENSHAW. Thank you. Mr. Yoder.

Mr. YODER. Thank you, Mr. Chairman. Chairman Kaye, welcome to the committee. Ms. Buerkle, good to have you back in Washington with us, and, of course, the class of 2010, colleague of ours that we know very well.

I want to ask you a little bit about off-road vehicles, and, as you know, Mr. Chairman, Congress has required independent scientific review by the National Academy of Sciences, National Highway Traffic Safety Administration, Department of Defense of the CPSC's proposed requirements for recreational off-highway vehicles, ROVs.

Just what, if any, ROV rulemaking has occurred in 2016, and if you assume the voluntary standard for ROV is accepted by ANSI, when do you expect the Commission will terminate its notice of a proposed rulemaking for ROVs, and if you anticipate a referral after final publication, how long?

Mr. KAYE. So to answer your first question, zero work has been done on finalizing the rule on ROVs because that is what Congress said, do not do any work on it, and we have not, and we have been very true to that.

Mr. YODER. Okay.

Mr. KAYE. We have spent all of our time and effort and resources working with the voluntary standards bodies. There are two of them that have been moving forward with their changes. It has been extremely encouraging. I anticipate and hope that they will end up balloting those. They would do final ballots and then publish them during the remainder of this fiscal year.

Our process is, based on our statutes, that once they do that, we will then have our staff make an assessment and send up a recommendation to the Commission, and then we will vote accordingly.

If it happens the way it seems to be happening, I know our staff has indicated, to date, that they have been pleased with the direction of the voluntary standards process has taken, and I would imagine that we would proceed accordingly based on the recommendation.

Mr. YODER. Ms. Buerkle.

Ms. BUERKLE. If I could add to that. When it came to the ROV issue, I must say the engagement of Congress and your oversight was extremely helpful and very effective, and the industry worked extremely hard trying to get to a standard, and they put in a lot of time and effort to make—to get to this point where, hopefully, we will get to a voluntary standard.

I do want to talk about engagement, though, because what added to the success of that was this engagement, this technical-to-technical meeting of the minds. And when it came to 1110 certificates of compliance rule that was brought up earlier, yes, there were meetings, and yes, there was a lot of discussion, but the proposed rule that was so very controversial is what we ended up with essentially.

So engage—all engagement isn't equal. Some is meaningful, some really achieves good results, and in some cases, it doesn't. A meeting for the sake of a meeting, I don't think is effective.

Mr. YODER. Well, I appreciate that, and I think what we have heard from Mr. Womack and some of the other questions today is certainly that engagement matters when it comes to ultimately getting a good result in which all the stakeholders have input, and you know, we get a—we get a rule or we get a voluntary standard in this case that is implementable and is consistent with the products that you are regulating.

I was interested in the port fees issue, and I wondered if you could talk a little bit about that. Does the CPSC have authority to implement these fees? Is there constitutional authority for this? Do you have legal authority to do this? What's the status of this? Are you looking for authorization from Congress?

What does that raise? And in terms of engagement, tell me about the engagement with those who would be paying the fee, and you know, in some cases, you know, the FDA, the folks who are paying it, you know, want to pay it because they can see better results and there is a relationship there. Is that the sort of relationship you fostered here?

Mr. KAYE. Well, we do have—back to your first question, we do have legal authority to collect the fees. We just don't have legal authority to keep the fees, and that actually does matter. We have to return them to the Treasury, and so what we are seeking is that additional legal authority to actually use them.

It has been raised that this is, per se, unconstitutional. That is just flat-out wrong. If you look at the Trailer Bridge case from the First Circuit last year, which is 797 F.3d 141, for legal folks paying attention, the First Circuit went through a very specific analysis on user fees, and if it is unconstitutional, I don't know why they would have gone through the analysis and declared it to be constitutional and to be appropriate. That doesn't make any sense.

And so I think it is important that we actually focus in on what we are asking for and not have red herring arguments about this. Let's discuss it on the merits. We view a user fee proposal that we would put out through normal notice and comment, which would have full stakeholder engagement, as being a very reasonable way to proceed, and we are talking about pennies on the \$1,000—per \$1,000 of imports, which is much tinier than FDA or anybody else ends up paying.

The benefit would be compliant trade would move through much more quickly, and we would be able to focus on noncompliant trade. Going back to the Congressman's questions about there are some actors out there that are not playing by the rules. We think that the compliant—the trade community should want us focusing better on those actors that not paying attention to the rules, and let compliant trade move through much more quickly, so that would be the benefit.

Mr. YODER. In terms of the engagement with the stakeholders, you know, is this a situation where they are coming to you and saying we want to do this and we are a part of this, or is it something that is more adversarial?

Mr. KAYE. It has been entirely adversarial. There has not—if there has been somebody out there who is in favor of this in the trade community, I have not heard about it.

Mr. YODER. Yeah, I mean, so that is an issue, because the folks who might benefit from the advancements and the services you could provide, they are not wanting to do it, and it concerns me that you don't have that level of engagement that you just expressed is important and you hope to have. I think that would be a critical part of moving forward.

Mr. KAYE. I think we have the engagement. We just don't like what we are hearing, and they don't like what we are proposing. I think it is important that they are not opposed to having us have a greater presence at the ports and having it be through general appropriations. They just don't like the user fee, and I think that is important. If Congress wants to allocate the amount of money

on an annual basis for us to run this program, we would be very accepting of that.

Mr. YODER. With limited time, Ms. Buerkle.

Ms. BUERKLE. I understand. Thank you. My concern with the user fee—and I don't consider the constitution a red herring, I think that where—our assessment at the ports is very different than USDA, so they look at every product coming into the country that they have jurisdiction over. We don't do that.

We have a risk assessment methodology, so we apply that risk. Some products are subject to that, some are not. And some fall prey to—and they get pulled because they are high risk. And so our benefit is only for some. All—every product coming in and every one we have jurisdiction over will not receive—and I put “benefit” in quotes—the benefit of us doing a risk assessment.

So if everyone doesn't derive the same benefit, then what we are looking at is a tax, and we do not have the power to levy a tax, and I don't think it is a red herring.

Mr. CRENSHAW. Thank you. And now let's turn to Mr. Amodei.

Mr. AMODEI. Thank you, Commissioner, Mr. Chairman. As you may recall from last year, I started out my questioning with saying: Hey, I am a process guy.

So I am not going to get into, hey, you should have done this, you should have done that. I am not saying that anybody here did that, but I am looking at an inquiry that I got from some folks who are in the bromine business and—which is an additive for flame retardants and stuff like that, and they have set forth a series of facts here that says, Hey, you got a petition from some folks, and they met with the Commission, and they said that the Commission said, Hey, we are going—we are going to accept the petition and do some rulemaking, and I haven't followed it that closely, but my initial concern is I think you guys, at least to some extent, are a quasi-judicial outfit. And so there are five of you, and so it takes three to decide to do something, I guess.

And so I am wondering if I can come to you with some day and go, hey, what do we need to do to gin up before you have done formal action in terms of are you prejudging whether or not to take it, what are the criteria? But I don't want you to weigh in then yet. That is kind of a smaller one. My main one is this:

When we talk about—and listen, bromine is toxic, so we don't need to talk about, gee, how can you say it is toxic. I mean, I think everybody says that. But when I am looking at some of the stuff like the Administrative Procedure Act, which I believe applies to you, and actually an executive order which we think probably ought to be followed, you know that is kind of a switch some days, which guides OMB that will ultimately review your work product that says, Hey, agencies should not and may not promulgate rules that are overlapping or contradictory to rules created by or being discussed by another agency, which brings us to primary EPA jurisdiction over toxic rules.

The Senate has recently—be listening carefully. The Senate has recently taken action on something that has to do with, you know, the Toxic Substances Control Act, or whatever the appropriate name is. So I am just wondering in terms of, hey, resources are scarce, we have got some OMB stuff that applies, I am not saying

you should or you shouldn't, but as the primary agency with control over toxic substances, is this something that you are at least contemplating saying let's see what the new stuff from the Congress is, which I know could mean we would all be dead of old age before that happens, but the Senate actually acted, so maybe we are going to get something. But in terms of at least waiting until the EPA does their thing to at least see when the dust settles, what, if anything, is appropriate instead of duplicating, perhaps, sending mixed messages. Help me on that process.

Mr. KAYE. So, first of all, I definitely remember our exchange from last year, and I really appreciated it, and I—as I mentioned to you when we spoke last year, I have the same view of process, and so on the petition, all we did was docket it, which means they just met the basic criteria for the Commission to have it under consideration. We have done nothing beyond other than have what was like an 8-hour hearing where we had the world come and testify about these issues.

At this point, now it is—and we got 1,000 pages of additional questions for the record, comments, and response to that that we have to go through. We have taken no further action, and it will take a long time for our staff to process all that information and to provide a recommendation as to whether we should grant the petition, whether we should defer on the petition, or deny the petition.

Mr. AMODEI. Okay. So deferral is an option?

Mr. KAYE. Deferral is definitely an option. It is always an option when it is sent up by the staff. The issue that you mentioned on chemicals is exactly why I was so pleased that we were able to get EPA and CDC to work with us to have a coordinated effort on crumb rubber, because I think that is the better way to go. And as it turns out that there is conclusive evidence that EPA is acting on a specific area that affects our jurisdiction, there is no reason for us to waste the time to go about and doing something about it.

So if that ends up happening and they clear the field and do something, great. If they don't, though, and sometimes, because it is a consumer product, and they may be looking at an underlying chemical—

Mr. AMODEI. Right.

Mr. KAYE. They are not looking at that interaction. It does come back to us, and then we have a question that we do have to resolve.

Mr. AMODEI. Then it would be appropriate.

Mr. KAYE. Thank you.

Ms. BUERKLE. I do want to say one thing about the petition, and that is, it is unprecedented that petition was even docketed, given the breadth and the scope of the chemicals and what the petition is asking for—that we would classify chemicals in a class rather than individually. That seems like a very broad and inappropriate use of the petition, and, in my opinion, it probably should not have been documented—docketed.

Mr. AMODEI. Well, I guess, since my time is limited, and the chairman manages, and I won't refer to it in speed dating in this hearing because I came to regret that in the prior hearing, Mr. Chairman. So please strike that reference from the record. We will continue to watch and may ask you to come in offline and just say,

okay, just kind of keep us apprised of how that is working with EPA, vis à vis, and your staff.

Mr. KAYE. Absolutely. If I can maybe just give you 3 seconds. It is not the staff's fault that somebody brought a broad petition. It is an objective criteria. If it meets the underlying criteria, the staff has to docket it. There is nothing inappropriate about bringing a petition that we would docket. It is somebody who is having to bring something broad.

Ms. BUERKLE. But it is broad enough that if we are banning classes of chemicals, which I think is—I don't think that should have been docketed.

Mr. AMODEI. We will look forward to more discussion. I yield back, Mr. Chairman. Thank you for your indulgence.

Mr. CRENSHAW. Thank you. And thanks to the witnesses for your testimony today. I thank you for being here. As Mr. Serrano said at the beginning, you have a very important job protecting people that are using products, thousands of products every day, so thank you for the work you do and thank you for coming here today. This meeting is adjourned.

Financial Services and General Government Subcommittee
Hearing on the Consumer Product Safety Commission
for Chairman Elliot Kaye

Questions for the Record Submitted by Chairman Crenshaw

Third Party Test Burden Reduction

As I stated earlier, I am frustrated that the Commission has not prioritized reducing third party test burden on small businesses. My understanding is that over the past several years, stakeholders have provided the Commission with proposals for reducing burdens and Commission staff has provided recommendations, yet we haven't seen a whole lot of forward momentum.

This Subcommittee has appropriated \$1 million for each of the past two years to carry out these congressionally mandated responsibilities to reduce the burdens associated with its testing rules. However, to date, nothing in the way of meaningful burden reduction has been accomplished.

Question: Why has the Commission not requested additional funds for third party test burden reduction activities in fiscal year 2017?

Response: I would first note that the Commission has, in fact, prioritized the work that is most likely to aid small businesses. That is why we have focused our efforts on expanding the list of materials—especially those most likely to be used by the smallest businesses—that we have determined need not be third party tested. It has also not been clear that most of the stakeholder suggestions would provide benefits particularly to small businesses. To ensure small business issues remain the priority, I have ensured throughout this process that our small business ombudsman has been closely involved in prioritizing this work, which has been aided greatly by the funds Congress has provided. More specifically, the FY 2016 Consolidated Appropriations Act included \$1.0 million with a 2-year availability to reduce the costs of third party testing associated with certification of children's products under section 14 of the Consumer Product Safety Act (15 U.S.C. 2063). As a result of the FY 2016 appropriation, at this juncture the CPSC still should have sufficient funding in FY 2017 to complete planned work that includes staff submission for Commission approval of draft final rules on testing phthalates in specified plastics; notices of proposed rulemaking (if supported by research data) for Commission approval on testing lead, phthalates and the chemical tests in the toy standard, ASTM F963, in manufactured woods and manufactured fibers; phthalates testing in several additional plastics; and completion of phase 3 of the Fourier-Transform Infrared (FTIR) technology development program that will focus on commercialization of the developed FTIR technology.

Question: How will the Commission use the \$1 million appropriated for third party test burden reduction?

Response: The Commission intends to use the FY 2016 appropriation of \$1 million to support the development and commercialization of FTIR spectroscopy analysis technology capable of

significantly reducing the third party testing costs associated with phthalates measurements on toys and child care articles. The FTIR technology is particularly important to develop because the current tests for phthalates are among the most costly that small businesses face. The Commission intends to spend approximately one-half of this appropriation in FY 2016, with the remainder to be spent in FY 2017. This expenditure will be in addition to support of our ongoing efforts started in previous fiscal years, as discussed above.

Question: When will the Commission submit its first quarterly report on its planned activities for reducing third party testing burden?

Response: The Commission submitted its first quarterly report earlier today, April 1, 2016, and it is also attached here at Appendix A.

Question: Will the report include an outline of concrete deadlines and deliverables?

Response: Yes, the report does include an outline of deadlines and deliverables.

Question: How has the Commission reached out to the regulated community in articulating what it needs to provide third party testing burden reduction as required by current law?

Response: The Commission continues to engage regularly with our stakeholder community. These discussions occur informally during stakeholder meetings and engagements, as well as formally through publication in the Federal Register of requests for information as well as proposed and final rules. Even with our extensive outreach, we always remain open to views and comments being shared unprompted with the Commission and the agency staff.

Import Surveillance and Stakeholder Engagement

Earlier this year, the trade community sent the Commission a letter expressing their concerns over the impact of a new fee and expansion of the risk assessment program. In their letter they requested that the Commission work directly with stakeholders on this important issue

Question: How has the Commission engaged stakeholders directly on this issue?

Response: Our engagement with the trade community has been ongoing for a while on many aspects of our import program. My sense of the feedback is there is widespread support for the full expansion of our import program to ensure we are meeting Congress' goal of having a national-scope, data driven risk-based program to stop dangerous products from entering the country. Our most recent engagement has focused mostly on how CPSC can do its part to join the Single Window envisioned by the Safe Port Act of 2006 and Executive Order 13659. On this issue, CPSC has worked closely with the trade community during the past year to define the scope of its e-Filing Alpha Pilot to collect targeting/enforcement data to enhance import surveillance operations. Outreach included numerous meetings and webinars with staff as well as two meetings that I personally led to be certain all participants understood how important their involvement and input are to us. The final pilot format was a direct reflection of the collaborative engagement we had with the trade community. CPSC's Office of Import Surveillance has also

been actively involved for many years with the Advisory Committee on Commercial Operations (COAC) within U.S. Customs and Border Protection (CBP) to reach out to members in the trade community about imported product safety solutions. CPSC staff also participates in all three of the Border Interagency Executive Committee (BIEC) groups, including the External Engagement Committee, which frequently meets with participating government agencies and members of the trade community involved in the integration with the Single Window through the Automated Commercial Environment (ACE) system.

Question: If the Commission is working directly with stakeholders, then why did the trade community send a letter to the Commission asking the Commission for direct stakeholder engagement?

Response: I am not certain of the timing of the letter you are referencing and our engagement. I am certain we have a very open door and regular contact with our stakeholders, and I expect that to continue while I am Chairman.

Question: As the Commission works to develop and nationalize the risk assessment methodology pilot targeting system, how will you work with the trade community, including manufacturers, retailers and importers?

Response: CPSC plans to work through the Trade Support Network (TSN) and trade associations, such as the American Association of Exporters and Importers (AAEI) and the National Customs Brokers & Forwarders Association of America (NCBFAA), to think creatively about solving problems regarding improving, and hopefully, nationalizing a full-production Risk Assessment Methodology (RAM). Until funding is secured, CPSC will not be able to support moving to a full national program. In the absence of being able to expand to a full national program, there remains the real risk of a shipment identified as high-risk being released into the country unexamined by CPSC (CPSC Inspector General's Import Surveillance Program Review Report issued January 22, 2016, found at: <http://www.cpsc.gov/Global/About-CPSC/OIG/CPSCImportSurveillanceReviewReport.pdf>).

Question: What benchmarks has the Commission developed to assess the effectiveness of import surveillance both from a targeting and a trade facilitation perspective?

Response: CPSC has developed performance measures that focus on the effectiveness in finding potentially violative imported products as well as facilitating legitimate trade. Regarding targeting effectiveness, the Office of Import Surveillance has a goal that measures the percentage of entries identified through the RAM pilot system that produce a product sample that requires further analysis. The Office of Import Surveillance is also tracking trade facilitation by measuring the percentage of import shipments processed through the RAM pilot system that are cleared within one business day. All of the import surveillance performance measures and results can be found in the FY 2015 Annual Performance Report <http://www.cpsc.gov/Global/About-CPSC/Budget-and-Performance/FY2015APR.pdf>.

Question: Has the Commission worked with customs and the trade community to develop these benchmarks?

Response: CPSC works closely with CBP on our import surveillance program. For example, the goals we have established around targeting effectiveness and trade facilitation are in line with CBP's priorities relating to import enforcement and facilitation of legitimate trade. We have also tailored our benchmarks to address and measure the key issues of concern to the trade.

Commission Rulemakings

The Commission recently has issued its fiscal year 2016 operating plan that outlines proposed rules on a number of highly controversial issues.

Question: How does the Commission engage in outreach to impacted stakeholders on controversial rules? Specifically, how has the Commission engaged on the proposed voluntary recall rule?

Response: Collaboration and consultation with our stakeholders have consistently been a priority throughout my time as Chairman. A wide range of stakeholders regularly note the spirit of openness, engagement and collaboration they see at the Commission. The agency works in the sunshine and often holds public meetings at which representatives of companies, associations and consumer advocacy organizations have testified. While I did not directly work on the proposed voluntary recall notice rule, which was proposed before I became Chairman, the Commission sought comments from the public in 2014 in accordance with the Administrative Procedure Act (APA). The agency received a number of comments from a range of stakeholders. I also plan for the agency to hold a workshop this year that will focus on recall effectiveness in order to get additional input from stakeholders.

Question: How does the Commission determine what efforts to prioritize its work on? And how is funding prioritized and allocated for each of these areas?

Response: The policy on establishing priorities for Commission action is set forth at 16 C.F.R. § 1009.8. It is the general policy that priorities for Commission action are established by a majority of the Commission members who vote on all requests for appropriations and vote on the agency's annual operating plan.

In establishing agency priorities, the Commission considers the following general criteria in accordance with § 1009.8:

- Frequency and severity of injuries associated with consumer products;
- Causality of injuries and the amenability of a product hazard to injury reduction through standard setting, consumer information and education, or other Commission action;
- The risk of chronic illness and the associated estimates of future injuries;
- Costs and benefits of CPSC action;
- The unforeseen nature of the consumer product-related risk
- The vulnerability of the population at risk;
- The probability of exposure to the hazard; and

- Any other relevant additional criteria staff believes warrants the Commission's consideration.

Using the criteria noted above, the Commission prioritizes work and allocates resources, as available, based on a vote of the Commission on a yearly operating plan with a midyear adjustment as warranted and as funds are available.

Question: How does the Commission measure and evaluate the effectiveness of its outreach?

Response: In recent years, CPSC has expanded our media monitoring contracts in order to collect additional metrics, including social media mentions. By tracking social media, CPSC's annual rate of media impressions has grown substantially. CPSC is generating more than 10 billion media impressions for all of the safety messages that we issue each year—recalls, emerging hazards, urgent safety warnings and seasonal safety warnings. While social media has helped the agency (and regulated companies) increase the number of consumers who are informed about certain recalls, I recognize that recall effectiveness remains a challenge for all parties involved. Moreover, I would like to see best practices developed and shared broadly throughout the government and private sector. My sense is that to truly evaluate the effectiveness of an outreach effort is very expensive and must be designed properly to achieve the best results. We would certainly welcome additional resources or other assistance in this area.

Voluntary Recall

Requiring every corrective action plan to be made legally binding would place significant burdens on manufactures and retailers.

Question: Why is the Commission proceeding with a final rule on voluntary recalls despite the overwhelming opposition to the proposal?

Response: I have stated previously that my priority as Chairman is for the Commission to prioritize those efforts to address persistent and deadly hazards, especially to children, in a meaningful, effective and sustained way. That does not mean other proposals, such as the voluntary recall rule, are without merit or without a safety benefit. However, I would not characterize this rulemaking as my highest priority to finalize given our limited resources at the agency.

Question: How has the Commission worked with industry and consumer groups to improve effectiveness in the existing recall process?

Response: When a recall is needed, CPSC works with recalling firms to determine the best way to reach consumers for that specific product. We are always looking for new techniques to promote recalls and achieve greater recall effectiveness. Currently, we are having some success using social media platforms, in addition to our traditional communication channels, to announce recalls. We have strongly encouraged firms to use Facebook, Twitter, YouTube, Instagram, Pinterest, and/or Google+ to communicate recall information. We have trained our Compliance

staff on the various social media platforms and even produced a social media guide for industry that is posted on our Recall Guidance Web page. In addition, CPSC posts most recalls on various social media platforms, such as Twitter, Google+, blogs, and YouTube. Compliance staff routinely gives speeches, makes presentations, and participates in recall effectiveness discussions with industry and consumer groups, and plans to continue these efforts. Additionally, we have completely updated our recall guidance page located at: <http://www.cpsc.gov/en/business--manufacturing/recall-guidance/>.

Earlier this year, I announced plans for the agency to hold a Recall Effectiveness Workshop with our stakeholders later this year. The workshop will offer an opportunity for us to engage many of our external stakeholders from industry, the consumer advocacy community and our sister agencies. I am open to hearing ideas from all interested parties and am committed to finding a better way forward. I do believe we will not make significant progress in this area, however, until companies dedicate the same amount of time, energy, money and creativity to recalls that they currently do to marketing.

Question: Has the Commission considered establishing a formal advisory committee that can help maximize the effectiveness of the recall process and could recommend future changes to the Commission and its staff?

Response: We have considered this process in a number of areas, not just this one. However, the challenges and costs of setting up a formal advisory committee in compliance with the Federal Advisory Committee Act (5 USC § App. 1) can be significant, especially for an agency as small as ours. Given our limited resources, I have prioritized finding effective ways to significantly improve the lines of communication with our stakeholders. I think we have made great progress in this area, with even more to come, including our upcoming recall effectiveness workshop.

Speaking more generally, I think it is important to note that CPSC is one of the most transparent agencies in the federal government. The Commission also annually holds a “Priorities Hearing” where any member of the public may attend and speak directly to the Chairman and the Commissioners about why a specific issue should be on the Commission’s agenda for the coming Fiscal Year. I always look forward to hearing from our stakeholders at this event.

Stakeholder Engagement

A founding principle of the Consumer Product Safety Act (CPSA) is that product safety is best achieved through a cooperative relationship with the private sector.

Question: Has the Commission considered using ad-hoc committees, public hearings or panel discussions to engage stakeholders?

Response: While I am not aware of any support in the Consumer Product Safety Act or its legislative history for that type of founding principle (in fact, the text of the CPSA and its legislative history strongly reflect a failure of that arrangement to sufficiently protect consumers), I do believe that CPSC should strive to maintain a productive relationship with industry, whether we are working through the voluntary standards or mandatory standards

process. Notably, a wide range of stakeholders regularly indicate the spirit of openness, engagement and collaboration they see at the Commission. More specifically, both the Commission and technical staff use ad-hoc arrangements, public hearings and panel discussions routinely. In addition to Commission hearings such as the annual Priorities Hearing and hearings associated with petitions and mandatory standards, the Commission and staff frequently meet with stakeholders throughout the year to share information and research, review issues and discuss technology developments. In Fiscal Years 2014 and 2015 combined, technical staff held approximately 450 such meetings—an average of just under one per work day. For Fiscal Year 2016 (through February), 113 meetings with stakeholders have already been held. Also, as previously discussed, I plan to hold a recall effectiveness workshop later this year and additionally a data/information sharing workshop shortly thereafter to continue the engagement and collaboration with our stakeholders.

Question: Are there benefits to empanel ad-hoc committees or host public meetings to discuss important issues, particularly before Commission resources have been devoted to highly controversial public rules?

Response: There is no doubt that feedback generally is very much a positive and why the agency continues to host public meetings on a variety of important topics. Under the APA, however, the agency must be careful to ensure the entire public has notice and an opportunity to comment on proposed agency actions. We will first and foremost continue to follow the APA as part of our ongoing and robust public engagement.

Question: What would happen to consumer safety if the Commission had an adversarial and antagonistic relationship with industry?

Response: The Commission values maintaining good relationships with its stakeholders. If the Commission had an adversarial and antagonistic relationship with industry, it is possible that the voluntary standards development process could slow to some degree, making achievement of a consensus position more difficult. However, it is unlikely that such a relationship would significantly impact report submissions under Section 15 (which are required by law) or have a significant adverse effect on recall negotiations as firms would continue to be motivated to resolve any issues with the agency. As previously discussed, I feel that CPSC is very open to communications and input from all stakeholders in a variety of ways. It is important to note, however, that the agency is an enforcement and regulatory body. Congress certainly anticipated, if not expected, in the establishment of the CPSC that to protect consumers the agency at times may need to take an adversarial position in some matters with some companies. We certainly hear regularly from numerous members of Congress that they expect CPSC to continue to take that posture as necessary for the safety of the public.

Question: Have you directed staff to engage in outreach to affected stakeholders on the controversial rulemakings the Commission has undertaken?

Response: Normally there is an ongoing dialogue with stakeholders on our work, so such a direction would not be necessary. As part of the development for our Alpha Pilot associated

with the import Single Window development, I did ask the staff to ensure they included as robust an outreach effort as reasonably possible and they did.

Crumb Rubber

The FY 2017 budget requests \$1 million to carry out activities associated with the Federal Action Plan on Recycled Tire Crumb Used on Playing Fields and Playgrounds.

Question: What specific activities does the Commission propose to undertake as a part of this action plan?

Response: Under the Federal Research Action Plan (Action Plan) on crumb rubber, CPSC staff has already begun meeting with industry representatives to better understand the manufacturing and use parameters for recycled tire-derived playground surface materials. CPSC staff will also work with the other members of the federal task force, EPA and the Centers for Disease Control and Prevention's Agency for Toxic Substances and Disease Registry to evaluate information about the tire crumb and the recycled tire-derived playground surface materials manufacturing processes, including the diversity of the processes and the composition of the feedstock.

For FY 2017, based on the work and outcomes of the Action Plan on crumb rubber, CPSC plans to conduct outreach to consumers to better understand how children interact with playground surfaces and identify the probable routes of exposure to any tire-derived substances. CPSC staff will also use the results of the Action Plan work on the analysis of the various materials of interest to begin sampling and analyzing materials used on playground surfaces.

Question: What does the agency hopes to accomplish through each of these activities and the budget breakout for each of these activities?

Response: The overall point of this work is to help efforts underway aimed at providing parents with the answers they deserve on the safety of these products. Based on the work and outcomes of the Action Plan on crumb rubber, CPSC will contract for hazard identification and exposure assessment to evaluate human health effects of crumb rubber used in playground surfaces. This work includes:

- \$50K for a peer review of the methods and processes that CPSC will use to identify and assess the potential chemical hazards,
- \$150K for a review of available literature and a data gap analysis to identify the types of data which are lacking in this area,
- \$150K to determine how children interact with playground surfaces and how they may be exposed to materials of concern,
- \$50K for outreach to industry to better understand the source and production of the materials used in playground surface materials, and
- \$600K to sample and conduct chemical analyses to identify and quantify any compounds of concern that may be released from recycled tire surfaces.

Transparency in the Civil Penalty Process

I am hearing concerns that the Commission is not transparent or collaborative in the civil penalty process. I believe there is a need for more clarity as to how the Commission comes up with its penalties.

Question: How is the Commission addressing concerns about the need for more transparency in the civil penalty process?

Response: The Consumer Product Safety Act, 15 U.S.C. 2064 et seq. (“CPSA”), and its interpretative regulations, clearly set forth the legal obligations of manufacturers, importers, distributors and retailers to report to the Consumer Product Safety Commission and the applicable considerations in assessing civil penalties.

Failure to comply with the reporting obligations of Section 15 (b) of the CPSA constitutes a prohibited act for which civil penalties may be imposed where there is a knowing violation. In September of 2015, the Office of the General Counsel issued a document entitled “Civil Penalty Enforcement Guidance” (“OGC Guidance”) (available at: <http://www.cpsc.gov/Global/Business-and-Manufacturing/Civil%20Penalties/OGCEnforcementGuidance.pdf?cpslanguage=en>) that sets forth the steps staff takes in evaluating these civil penalty cases and advises firms of procedures that staff follows in such matters.

Staff interacts closely with firms, providing detailed information throughout the process. The statutory factors that the Commission considers in determining the amount of a civil penalty are clearly set forth in Section 20(b) of the CPSA. These factors include the nature, circumstances, extent and gravity of the violation, including the nature of the defect, the severity of the risk of injury, the occurrence of absence of injury, the number of defective products distributed, the appropriateness of such penalty in relation to the size of the business, including how to mitigate undue adverse economic impacts on small business, and other factors as appropriate. In addition, CPSC interpretative regulations in 16 C.F.R. Part 1119 also provide extensive guidance on how the Commission applies these civil penalty factors and on other factors the Commission may consider, including: (1) a safety/compliance program and/or a system relating to a violation; (2) a history of noncompliance; (3) economic gain from noncompliance with the CPSA or other Acts, and the regulations thereunder, as enforced by the Commission; and (4) failure to respond in a timely fashion to the Commission’s requests for information or remedial action. Each of the statutory factors and each of the applicable “other factors,” including mitigating factors, are specifically addressed in light of the facts of each case.

Following the issuance of a show cause letter, firms often will request, in addition to submitting written responses, to meet with staff and those requests are routinely granted. At such meetings, staff addresses how the facts of the case, in light of the applicable statutory and regulatory factors, warrant a civil penalty and firms are given ample opportunity to present counter arguments.

Question: What specific steps can the Commission take with regards to providing more information about mitigating factors to make the process more predictable?

Response: The statutory factors that the Commission considers in determining the amount of a civil penalty are set forth in Section 20(b) of CPSA. In addition, the Commission has provided further clarification regarding the factors in 16 CFR part 1119. Specifically, in determining a civil penalty amount, the statute directs us to consider the appropriateness of a penalty in relation to the size of the business charged, including how to mitigate undue adverse economic impacts on small businesses. Staff engages with firms to determine whether they qualify as a small business so that this mitigation factor may be applied as appropriate. I am open to additional suggestions you or your staff might have in this area that would be consistent with the law.

Question: Does the Commission provide written explanations of the basis for penalties sought?

Response: Yes. As discussed previously, in cases where a civil penalty is sought, staff sends a show cause letter that sets forth a detailed discussion of the facts and law supporting the civil penalty demand. Staff explains the basis for the violation and provides an analysis of the civil penalty factors considered in determining the civil penalty amount.

Question: In the civil penalty assessment process, how does the Commission explain the factors it considers in the civil penalty process, including mitigating factors, to determine penalty amounts?

Response: As stated previously, staff issues a show cause letter to a firm, explaining the statutory and regulatory factors considered in determining the civil penalty amount. These factors, including mitigating factors, which encompass consideration of undue adverse economic impacts on small business and whether a firm has an adequate compliance program in place, are typically discussed in meetings with a firm following issuance of a show cause letter.

Question: Does the Commission believe the detailed explanations of how it reaches its civil penalties are sufficient?

Response: Yes. In addition to the detailed explanation of a specific penalty demand provided in show cause letters, the recently issued OGC Guidance provides important information on the civil penalty process. Civil penalty cases involve complete assessments of facts analyzed in the context of civil penalty factors set forth in the CPSA. That case by case analysis is further informed by the regulations interpreting those factors and by additional explanatory information provided when the final regulations were adopted. Considerable explanation is provided to subject companies and extensive background information is made available to them.

Question: Has the Commission proposed any recommendations regarding its civil penalty process to make it more transparent and collaborative?

Response: The issuance of the OGC Guidance should help provide additional information to the regulated community. In addition, by requiring firms to have compliance programs and establish

systems of internal controls, we have seen increased collaboration and dialogue with firms interested in discussing best practices to achieve a successful compliance program. Although staff does not approve the details of specific programs, staff can and does provide generalized input and ask questions that facilitate the development of robust programs. However, there is a limit to how collaborative a penalty process can and should be. Our primary statutory mission is consumer safety, and sometimes that work requires positions that are by nature somewhat or entirely adversarial. As with any enforcement/regulatory agency, Congress certainly anticipated, if not expected, in the establishment of the CPSC that to protect consumers the agency may need to take an adversarial position in some matters with some companies.

Table Saws

The Commission is considering a rulemaking on table saws to make “flesh-sensing” technology mandatory for all table saws and plans to move on this rule in September 2016. There is concern that the proposed table saw rule creates a sole source monopoly for one company which would preclude others from developing and producing flesh-sensing technology without infringing on existing patents.

Question: Shouldn’t concerns about a monopoly be a substantial factor when considering a mandatory standard?

Response: The table saw rulemaking occurs under the Consumer Product Safety Act (“CPSA”). Section 7 of the CPSA authorizes the Commission to promulgate consumer product safety standards that consist of (1) requirements expressed in terms of performance requirements and/or (2) requirements for warnings or instructions for use. 15 U.S.C. § 2056 (a). Accordingly, the CPSC is not considering mandating the use of any particular technology for table saws. However, if only one company is able to meet the proposed performance requirements without infringing on patents, although the CPSC is not precluded from prescribing performance standards for a system to reduce or prevent injuries from contacting the blade of a table saw, the Commission will give that due consideration in its deliberative process.

Question: What weight will the Commission give to the possibility that a mandatory standard could create a monopoly?

Response: Consistent with the agency’s normal practice, staff will conduct a market analysis, the results of which will be communicated to the Commission and taken into account in the Commission’s deliberative process.

Question: At what point do the concerns over creating a monopoly override the mandatory standard?

Response: The Commission must consider “the need of the public for the consumer products subject to the rule, and the probable effect of such rule upon the utility, cost, or availability of such products to meet such need.” Id. § 2058(f)(1)(C). Concerns over creating a monopoly must be considered in the context of the Commission’s statutory obligation to adequately address the risk of injury associated with table saw blade injuries and to consider the rule’s potential effect

on utility, cost and product availability. The Commission would have to make that decision through its deliberative process.

Question: How does the Commission reconcile its intent to reduce injury rates through a new mandatory standard, with the possibility of eliminating the most popular category of table saws from the market and the likely resultant increase in injury rates?

Response: CPSC staff has not finalized a Notice of Proposed Rulemaking (NPR) package and is still evaluating potential effects on all types of table saws. At this point, staff does not have technical information to indicate that the most popular category of table saws will be eliminated by any performance requirement under evaluation. Moreover, the staff would not propose, nor would the Commission approve, any performance standard where the likely result would be an increase in injuries.

Question: With the possibility of increases in injuries from homemade configurations of table saws, has the Commission considered reevaluating the risks of the rulemaking?

Response: CPSC staff is not aware of incidents involving homemade configurations of table saws. Because of a lack of evidence of this being a concern, staff has not studied the theory of consumers transitioning to other means of wood-cutting in lieu of a commercially available table saw.

Question: Has the Commission reevaluated its plan to vote on the proposed table saw rule in September?

Response: The FY 2016 Operating Plan, unanimously approved by the Commission, directs staff to prepare an NPR briefing package for the Commission's consideration by the end of the fiscal year. The Commission will determine how to proceed after receiving that briefing package.

Petition Regarding Flame Retardants

The Commission is currently considering a petition that requests the agency to evaluate a broad range of chemicals, organohalogen flame retardants, in hundreds of products. These chemicals are already being evaluated by U.S. EPA under its Toxic Substances Control Act (TSCA) Work Plan Chemicals Program.

Question: Will the Commission carry out this petition?

Response: CPSC staff is preparing a briefing package by the end of the fiscal year to present to the Commission for consideration on whether to grant, deny or defer decision on the petition. The briefing package is based on existing information, including information provided by the petitioners, as well as public comments on the petition.

Question: What resources will the Commission dedicate to conduct a review of products?

Response: CPSC staff will not conduct any new research related to the petition unless the Commission grants the petition and/or directs the staff to perform the work.

Question: Has the Commission consulted with the EPA?

Response: The CPSC staff meets quarterly with EPA staff in the Office of Pollution Prevention and Toxics (OPPT). The staff has been coordinating its activities on flame retardants with the EPA since it announced plans for several categories of flame retardants several years ago. While staff has not yet spoken to the agency about this petition, I anticipate staff will do so. Closer coordination among federal agencies on the exposure of children to harmful chemicals is a high priority for me. While I am Chairman, we will continue to engage on this issue with our federal partners.

Phthalates Rulemaking

Question: Is the Commission requesting any additional funding or resources in FY17 to complete the phthalates rulemaking as proposed in 2014?

Response: Not at this time.

Question: What is the timing for the final rule?

Response: CPSC staff intends to send a briefing package containing a draft final rule to the Commission in FY 2016, as directed by the FY 16 Operating Plan.

Questions for the Record Submitted by Congressman Womack

FTEs

The FY17 request calls for \$3 million to be spent on an additional 15 FTEs supporting the Office of Import Surveillance. CPSC's authorized strength is 567 FTEs. Currently, strength is about 540. This disparity in staffing patterns has persisted for the last few years, and suggests that CPSC can make do with fewer people or realign current openings to match up with mission priorities.

Question: Given the FY17 request of \$3 million to be spent on 15 additional FTEs supporting the Office of Import Surveillance, I am curious to know when the last time all FTEs at CPSC were filled. Noting the agency's current authorization of 567 FTEs verses actual strength, would I be wrong to assume that the Commission might better serve the taxpayer by realigning current openings or would that upset the current ability of the CPSC to use unfilled FTE dollars for mid-year unfunded projects?

Response: According to the FTE calculations called for in OMB Circular A-11, CPSC was most recently at full FTE authorization in August 2015. The agency currently has filled approximately 96% of its available FTE and is actively recruiting for the 4% of positions that are open. The issue is not that the CPSC has unused positions that could be reallocated to other functions, rather, these vacancies are related to regular attrition across the CPSC workforce that is unknown

until it occurs. If we utilized available FTEs to realign positions to the Office of Import Surveillance, we would lose the ability to fill those critical positions that are currently being recruited. In the absence of additional salary dollars to fund 15 new import positions, the agency may not be able to increase physical port presence without risking overages in our salary budget. Since you asked about our funding levels and serving taxpayers, I hope you would agree that taxpayers deserve a sufficiently funded and supported agency that works, as intended by Congress, to protect consumers as its primary mission. Based on your question, I am concerned you do not have a complete enough understanding of our mission and work and would invite you to come meet with our staff and with me to learn more about what we do to protect consumers.

Civil Penalties

The Office of General Counsel's goal is to seek the highest civil penalty amount possible; how the factors in each individual case correlate to the amount sought remains a mystery and there seems to be a lack of good-faith negotiation.

There seems to be a great deal of uncertainty among regulated entities surrounding what, when, and how to report product incidents. For decades, this process worked very smoothly, but now, suddenly, there seems to be a breakdown in Commission communication regarding how companies can satisfy their reporting obligations. In parallel with this, your agency has intentionally, and proudly I might add, sought more and greater civil penalties from companies for failure to adequately report. The cynic might say you're stacking the deck by confusing companies about their reporting requirements and then really sticking it to them with high penalties when they inevitably get it wrong.

Question: What are you going to do to provide clarity in this area for regulated entities and when do you intend to do this?

Response: I am concerned that you do not have a complete understanding of our work and our approach. Guidance regarding our statutory reporting obligations is no secret and is publicly available. The Commission publishes a great deal of information on our website, which firms may consult, regarding their reporting obligations under the Acts administered by the Commission. Specifically, I invite you to review the following documents if you have not done so already:

The Recall Handbook can be found at:

<http://www.cpsc.gov/en/Media/Documents/Business--Manufacturing/Industry-Guidance/Recall-Handbook/>

The Regulated Products Handbook can be found at:

<http://www.cpsc.gov/en/Media/Documents/Business--Manufacturing/Business-Education/Regulated-Products-Handbook/>

The handbooks also discuss the civil and criminal penalty provisions in the CPSA and other Acts that will subject a firm to sanctions for violations of those reporting requirements.

Our website also contains a page that specifically lays out the responsibilities of a manufacturer, retailer, distributor or importer under section 15 of the CPSA and other Acts administered by the Commission. That page can be found at <http://www.cpsc.gov/en/Business--Manufacturing/Recall-Guidance/Duty-to-Report-to-the-CPSC-Your-Rights-and-Responsibilities/>. This site makes clear that such firms are under a legal obligation to report immediately—within 24 hours, or after an investigation that should not exceed 10 days—even if no injury has been reported. The site advises firms that the Commission’s advice is “when in doubt, report,” which mirrors the language of the applicable regulations. The site also contains a link to the Fast Track Program, under which firms can report a defect and agree to undertake a recall within 20 working days of reporting to the CPSC.

In addition to the information related to civil penalties available on our website, Compliance staff and the Office of the General Counsel regularly communicate with companies about their reporting obligations. Overall, I believe that the accusation that there has been a breakdown in Commission communication regarding reporting obligations is not accurate. I would invite you to take the time to meet with our staff and with me so that you may truly understand our work, our processes and our commitment to protect the public.

Voluntary Recall

The FY 16 Operating Plan schedules for completion this year a proposed final rule that would require the corrective action plan for every CPSC recall to be reduced to writing in a legally binding form. It also would preclude manufacturers from disclaiming that their product is defective unless the CPSC agrees. This latter idea would be so destructive to the Commission’s successful “fast track” recall program that former Chair Ann Brown, came out of retirement to criticize it. There has been tremendous outcry from the regulated community against this. Last week, the CPSC approved its FY16 operating plan, which includes the issuance of a final rule for voluntary recalls. You have repeatedly said that this rule is not a priority as it is not safety-focused, yet it still has not been withdrawn so that the Commission can work with stakeholders on identifying areas in need of improvement. What’s more is that the CPSC continues to ignore the direction of Congress on this issue, as well as the will of the people. Out of the over 50 public comments received for this proposal, all but one opposed the rule. And even this one expressed very tepid support. Your written responses to questions made clear that you “will continue to evaluate the project recommendations from our staff.” As Chairman, you and not staff control the agenda.

Question: Will you bring the voluntary recall rule up for a final vote this year?

Response: As I have stated previously, my priority as Chairman is for the Commission to prioritize persistent and deadly hazards, especially to children, that need to be addressed in a meaningful, effective and sustained way. That does not mean other proposals are without merit or without a safety benefit. However, I would not characterize this rulemaking as my highest priority to finalize given our limited resources at the agency.

Question: Will you allow the Commission to vote on withdrawing the rule in its entirety?

Response: There remains support for this rule in some form. I would prefer to see a compromise reached as opposed to taking the time and resources to end this rulemaking and beginning another to serve as the vehicle for such a compromise.

Question: Would it be true to state that this rule is a priority of other Democrat Commissioners and will become a rule if put forward?

Response: I cannot speak for the other Democratic Commissioners.

Question: You previously testified that you believe removal of the proposed regulation from the agenda would be “inefficient.” Please explain what efficiencies would be served by retaining a proposed rule that was overwhelmingly opposed by industry and retailers.

Response: There remains support for this rule in some form. I would prefer to see a compromise reached as opposed to taking the time and resources to end this rulemaking and beginning another to serve as the vehicle for such a compromise.

Questions for the Record Submitted by Congressman Amodei

Brominated Flame Retardants

The CPSC has been petitioned by advocacy groups to ban brominated flame retardants in children's products and furniture. Stakeholders met with the CPSC to discuss the petition and they believe the commission indicated they intend to “approve” the petition and move forward with rulemaking. While the CPSC does have authority for this through the basic tenant of consumer protection, chemicals are already regulated by the EPA. Specifically, the EPA is evaluating flame retardants as a part of its Toxic Substances Control Act program. Particularly, with the recent Senate passage of a long negotiated TSCA modernization bill, which will be sent back to the House for consideration shortly, it is the clear intent of Congress that the EPA is the regulator of toxic chemicals. The Administrative Procedures Act and the Executive Order which guides OMB who will have ultimate review authority of the CPSC rule provides that agencies should not and may not promulgate rules that are overlapping and or contradictory to rules created by, or being discussed in another agency.

Question: Why the agency would the agency decide to expend its limited resources to conduct a review of products for which another agency has primary jurisdiction and has already invested significant resources to assess?

Response: The Commission received a petition on this subject that met the requirements to be docketed. The Commission then voted unanimously to direct staff to prepare a briefing package for Commission consideration on whether to grant, deny or defer the petition. The Commission has not yet received the staff's briefing package and therefore has not yet decided whether to grant the petition. I am also unaware of anyone at the Commission indicating any intent to take any specific action one way or another with the petition.

More generally, EPA has had jurisdiction over the manufacture or importation of chemical substances, since TSCA was enacted more than 40 years ago. However, the Federal Hazardous

Substances Act (FHSA) gives CPSC regulatory authority specifically over household products that are hazardous to consumers by virtue of toxicity or certain other hazards. 15 USC 1261(f)(1)(A). Section 9 of TSCA, as it stands now, requires EPA to consult with CPSC before promulgating any rules regarding products under CPSC jurisdiction.

The CPSC staff has been coordinating its activities on flame retardants with EPA and other federal agencies for many years. If the petition is granted, the staff will continue to coordinate its activities closely with EPA to avoid duplication of effort. While EPA may, in time, regulate the manufacture of certain flame retardant chemicals or their use in consumer products, such regulations might not address all of the potential hazards associated with consumer products. Furthermore, the CPSC staff has considerable expertise in assessing the potential risks from chemicals in consumer products and in enforcing regulations for consumer products, including imported products.

Question: Where does this issue lie in the context of agency priorities?

Response: In the FY 16 Operating Plan, the Commission voted for staff to prepare a briefing package on this issue. That said, the larger issue of children being exposed to harmful chemicals is one of my highest priorities and is a major public health matter that deserves far more attention from Congress.

Questions for the Record Submitted by Ranking Member José E. Serrano

Staffing Levels

70% of your agency funding supports staff and rent. The CPSC has seen a pretty steady decline in staffing levels over the years. Staffing levels peaked at about 1,000 in 1980 and now stand at around 567.

Question: If your FY 17 Request is implemented that number will increase by 15 to 582, is this where you think the Commission needs to be at in order to successfully implement and enforce our consumer protection laws?

Response: CPSC is dependent on staffing to meet our agency mission. We are currently working hard to build our workforce back up after years and years of devastating and harmful cuts. In order to fully implement our import surveillance vision, we would need to increase our FTEs by approximately 40 staff during the next five years. We also currently do not have enough staff to adequately respond to emerging hazards that change all the time. Some of the recent emerging hazards that have arisen for us in the last year are laminate flooring, crumb rubber and hoverboards. When these safety issues arise, we are forced to pull our limited staff from other critical projects to respond. I would very much welcome an honest and robust conversation with Congress about what our staffing and funding levels should look like to genuinely be the CPSC that the public expects and needs. We are nowhere near those levels now.

Question: In what areas is the Commission in the greatest need of adding staff?

Response: As mentioned, I would very much welcome a much fuller discussion on this subject to do it justice. At a minimum, we really need more import surveillance staff to respond to how products enter the country, as well as technical and scientific staff such as toxicologists, engineers and health scientists, to better address emerging hazards and chronic hazards.

Pool and Spa Safety

This Subcommittee provided \$1 million in FY 14 for funding of the Virginia Graeme Baker Pool and Spa Safety Act, which was strongly supported by another member of our Committee, Representative Debbie Wasserman Schultz. I understand that you issued 5 grants totaling \$800 thousand.

Question: What will happen with the remaining \$200 thousand—can it be used?

Response: I am proud of the staff at CPSC for working diligently to carry out the requirements of the Virginia Graeme Baker Pool and Safety Act (VGB Act), which resulted in grant awards being made on December 11, 2015. The way that Congress set up the grant program, we would have to divert funds from other critical safety work in order to cover the costs associated with administering the remaining funds. The agency estimates those administrative costs at approximately \$400,000. At this time, it would not be cost effective to reissue a second funding opportunity announcement in an effort to award those additional funds because it would cost the agency nearly twice as much as we would be able to award. The agency is currently researching a reprogramming or a funding transfer to propose to the Congress. We would very much support efforts to administer additional grants as long as Congress provided sufficient funds to cover the associated administrative costs and to ensure the program can be funded without negatively impacting our other safety work.

Question: Can you tell us about your educational efforts in this area?

Response: The *Pool Safely* campaign has nearly 900 partners nationwide; has secured *Pool Safely* Pledges from more than 30,000 people; and achieved nearly 1 billion media impressions since 2010 for our broadcast, radio and print public service announcements (in English and Spanish). This year, I am leading an effort along with Congresswoman Wasserman Schultz to secure placement of drowning prevention messaging on coverage of the Olympic Games in Rio on broadcast channels, social media and additional platforms. This groundbreaking effort is intended to encourage parents and caregivers to help their children to learn to swim, constantly supervise children in and around water and install layers of protection that prevent a child from having unfettered access to a pool.

Web Site

I appreciate the progress you've made in getting Spanish translations of your web site and the manuals that you produce on-line. I also applaud putting other language translations on-line. I understand that the process of navigating to those translations is a bit challenging

Question: Are you working on improving that? If so, what improvements have been made?

Response: I am pleased to share with you that we have created several Spanish resources to provide Spanish-speaking consumers with direct access to timely safety information and seasonal safety warnings. We have a unique URL (SeguridadConsumidor.gov), a dedicated Twitter account (@SeguridadConsum), and dedicated YouTube channel (<https://www.youtube.com/playlist?list=PLB8E037E5246E8865>). As we enhance our agency's website and expand onto additional social media platforms, we will provide even more content in Spanish and reach even more consumers with lifesaving information.

Financial Services and General Government Subcommittee
Hearing on the Consumer Product Safety Commission
for Commissioner Ann Marie Buerkle

Questions for the Record Submitted by Chairman Crenshaw

Third Party Test Burden Reduction

As I stated earlier, I am frustrated that the Commission has not prioritized reducing third party test burden on small businesses. My understanding is that over the past several years, stakeholders have provided the Commission with proposals for reducing burdens and Commission staff has provided recommendations, yet we haven't seen a whole lot of forward momentum.

This Subcommittee has appropriated \$1 million for each of the past two years to carry out these congressionally mandated responsibilities to reduce the burdens associated with its testing rules. However, to date, nothing in the way of meaningful burden reduction has been accomplished.

Question: Why has the Commission not requested additional funds for third party test burden reduction activities in fiscal year 2017?

Answer: The Commission did include a request for burden reduction funds in its original FY2017 request, but the Office of Management and Budget (OMB) denied that portion of the request. The President's request therefore omits any amount for burden reduction. Despite the direction in Public Law No. 112-28, the Commission majority still tends to consider burden reduction a distraction from CPSC's primary mission. The Commission majority has adopted a very stingy interpretation of the burden-reduction mandate. Your dedicated appropriations over the last few years have overcome one form of inertia but much more could be done if the Commission simply had the will.

Question: How will the Commission use the \$1 million appropriated for third party test burden reduction?

Answer: The Commission is spending about half the appropriated amount in FY 2016 on private-sector development of a Fourier-Transform Infra Red (FTIR) instrument for screening of phthalates. I anticipate that the remaining funds will be used for the same purpose. While this technology does have some promise, I have some reservations about using the test burden reduction funds for this purpose. First, it is the CPSC, not manufacturers, who will benefit most from the improved technology, at least initially. CPSC already uses older FTIR devices at the ports to screen products for phthalates. Advanced FTIR devices will permit the agency to do finer screening. If the total amount of phthalate (including both prohibited and other types) is below 1,000 parts per million, then the agency can decide to allow entry rather than send samples to our laboratory to conduct further testing for specific phthalates. Since testing for specific phthalates is quite expensive, this may save the CPSC a considerable amount. It is doubtful, however, that the Commission majority will interpret the Consumer Product Safety Improvement

Act of 2008 so as to allow manufacturers to do the same type of screening. Unless it does, manufacturers will still have to send samples to third-party laboratories to be tested for phthalates. I would hope that the Commission will eventually allow the third-party test labs to use the new FTIR methods for screening. This step should result in some cost savings but the process could take several more years and will depend in part on the test labs' willingness to pass their own cost savings on to their customers. Secondly, it appears that the funding provided to this company is paying for their research and development. If the resulting product can be sold at a profit, then the Commission should perhaps be looking at recouping some of its investment.

Question: When will the Commission submit its first quarterly report on its planned activities for reducing third party testing burden?

Answer: I have been advised that the Chairman will include the staff's first quarterly report on burden reduction as an attachment to his responses to your questions for the record.

Question: Will the report include an outline of concrete deadlines and deliverables?

Answer: The report should include concrete deadlines and deliverables. I have had no input into the staff's report. However, once I am able to review that report, I will determine whether it is necessary to prepare my own report as to how burden reduction has been approached during this past year.

Question: How has the Commission reached out to the regulated community in articulating what it needs to provide third party testing burden reduction as required by current law?

Answer: The Commission has had little or no engagement with stakeholders on test burden reduction since the April 3, 2014 workshop.

Import Surveillance and Stakeholder Engagement

Earlier this year, the trade community sent the Commission a letter expressing their concerns over the impact of a new fee and expansion of the risk assessment program. In their letter they requested that the Commission work directly with stakeholders on this important issue

Question: How has the Commission engaged stakeholders directly on this issue?

Answer: I am not aware of any engagement by the Commission with stakeholders on the issue of import fees beyond the assurance that the Commission will conduct notice and comment rulemaking before establishing any fees. I believe the Commission's request for authority to collect import fees is seriously flawed. Indeed, not even the one case so prominently cited by the Chairman during the subcommittee's hearing supports his position on constitutionality. *See Industria Y Distribucion De Alimentos v. Trailer Bridge*, 797 F.3d 141 (1st Cir. 2015).

The suit arose after the Puerto Rico Ports Authority (PRPA) promulgated a regulation requiring a security scan of all cargo entering the Port of San Juan. The agency installed scanning equipment at the facilities of three major shipping operators. 797 F.3d at 143. To pay for the

scanning, the agency imposed an “Enhanced Security Fee” on all vessels carrying cargo into the port of San Juan, including those who did not have access to the scanning facilities. 797 F.3d at 144. The court below held that imposition of the fee on those whose cargo was not scanned was unconstitutional and enjoined its collection. The government chose not to appeal this ruling. Therefore, the First Circuit addressed only the portion of the case involving shipping operators whose cargo was scanned at the facilities, and emphasized that they had appealed solely under the dormant Commerce Clause and not under other constitutional theories. In short, this case hardly supports the Commission’s request for authority to impose a fee on all imports subject to CPSC jurisdiction. To the contrary, the lower court’s undisturbed ruling shows that the type of fee the Commission has sought to impose would not be constitutional.

Question: If the Commission is working directly with stakeholders, then why did the trade community send a letter to the Commission asking the Commission for direct stakeholder engagement?

Answer: The letter from the trade community was the result of frustration with the lack of engagement.

Question: As the Commission works to develop and nationalize the risk assessment methodology pilot targeting system, how will you work with the trade community, including manufacturers, retailers and importers?

Answer: I am concerned that the Commission is not seriously considering a more substantial and continuing engagement with the trade community on these issues. I also wish to continue to emphasize that the current risk assessment system is already national in scope; the system assigns a risk ranking to all imports in categories selected by the Commission regardless of the port of entry. The Commission majority’s continuing references to the current system as a “pilot” are misleading in this respect. My position is that the CPSC has complied with section 222 of the CPSIA.

Question: What benchmarks has the Commission developed to assess the effectiveness of import surveillance both from a targeting and a trade facilitation perspective?

Answer: The Commission’s operating plan includes a number of benchmarks that are related to these issues. However, these metrics should be refined and updated periodically to improve the system’s effectiveness.

Question: Has the Commission worked with customs and the trade community to develop these benchmarks?

Answer: The Commission has worked closely with Customs and Border Protection (CBP) to develop its import surveillance system. I am not aware that it has engaged with the trade community to develop the current benchmarks.

Commission Rulemakings

The Commission recently has issued its fiscal year 2016 operating plan that outlines proposed rules on a number of highly controversial issues.

Question: How does the Commission engage in outreach to impacted stakeholders on controversial rules? Specifically, how has the Commission engaged on the proposed voluntary recall rule?

Answer: I am not aware of any significant engagement with stakeholders on this issue beyond reception of comments on the proposed rule. The Administrative Procedure Act requires giving notice and an opportunity to comment, so they represent the bare minimum that the agency can do.

Question: How does the Commission determine what efforts to prioritize its work on? And how is funding prioritized and allocated for each of these areas?

Answer: The Commission has a regulation stating general criteria to be considered in establishing priorities for Commission action. It was last revised in 1977. None of the criteria relates to the effect of Commission actions on manufacturers. For example, the criteria do not mention test burden reduction although it is a clear priority of the Congress. I am pleased to report that the Commission has recently proposed a process for retrospective review of regulations, which should provide a systematic mechanism for considering the burdens of regulations. The Commission allocates funding by virtue of its annual operating plans. The operating plan is supposed to be reviewed by the Commission before the start of the fiscal year; however, the FY 2016 operating plan was not voted on until February, almost half way through the fiscal year. This makes it even more difficult for the Commission minority to influence the use of appropriated funds. For that reason, this subcommittee's oversight is extremely important.

Question: How does the Commission measure and evaluate the effectiveness of its outreach?

Answer: The Office of Communications generally uses the number of media impressions to gauge the effectiveness of the Commission's outreach. This measure has the advantage of being easy to calculate, but it is far from ideal. A better measure would reflect what messages consumers actually hear, and the extent to which they are understood and heeded. However, getting at these more meaningful measures could pose a number of difficult challenges.

Voluntary Recall

Requiring every corrective action plan to be made legally binding would place significant burdens on manufactures and retailers.

Question: Why is the Commission proceeding with a final rule on voluntary recalls despite the overwhelming opposition to the proposal?

Answer: I have repeatedly stated my strong opposition to the Commission proposal. In my judgment, the proposed rule should be withdrawn, and if it is not, it should be defunded.

Question: How has the Commission worked with industry and consumer groups to improve effectiveness in the existing recall process?

Answer: I am not aware of any systematic work with industry to improve the effectiveness of recalls. I have long been asking the Chairman to engage with stakeholders on this topic. I am pleased to report that he recently announced plans to hold a workshop on this issue later in the year.

Question: Has the Commission considered establishing a formal advisory committee that can help maximize the effectiveness of the recall process and could recommend future changes to the Commission and its staff?

Answer: The current Commission majority seems to be adamantly opposed to any formal advisory committee. While the Commission would have to dedicate some resources to establishing an advisory committee, the Commission should do what other agencies have done in this area, and not consider it to be an insurmountable obstacle.

Stakeholder Engagement

A founding principle of the Consumer Product Safety Act (CPSA) is that product safety is best achieved through a cooperative relationship with the private sector.

Question: Has the Commission considered using ad-hoc committees, public hearings or panel discussions to engage stakeholders?

Answer: The Consumer Product Safety Act requires the Commission to hold a hearing annually to give stakeholders an opportunity for input on its priorities for the coming year. The Commission also occasionally holds workshops to get input from the public, but they are not regular or frequent, and many industry stakeholders have grown weary of giving input that seems to be ignored by the Commission majority.

Question: Are there benefits to empanel ad-hoc committees or host public meetings to discuss important issues, particularly before Commission resources have been devoted to highly controversial public rules?

Answer: I believe we can and should do much more of this. The Commission has held or participated in several valuable tech-to-tech meetings in the last year or so. Such steps are even more valuable if they take place before the Commission is committed to a particular course.

Question: What would happen to consumer safety if the Commission had an adversarial and antagonistic relationship with industry?

Answer: An antagonistic relationship already exists to some extent. Many in the regulated community express concern that the relationship has deteriorated over the past few years. If not improved, the Commission stands to lose the cooperation of the regulated community. If that grows worse, the result would be disastrous for the Commission. A great deal of the Commission's success depends upon cooperative working relations with industry.

Question: Have you directed staff to engage in outreach to affected stakeholders on the controversial rulemakings the Commission has undertaken?

Answer: As a Commissioner in the minority, I lack the authority to direct the staff against the wishes of the majority. I have encouraged the Chairman and Commission majority to increase engagement in this area and in others.

Crumb Rubber

The FY 2017 budget requests \$1 million to carry out activities associated with the Federal Action Plan on Recycled Tire Crumb Used on Playing Fields and Playgrounds.

Question: What specific activities does the Commission propose to undertake as a part of this action plan?

Answer: I did not support the FY 2017 budget request in part because I thought the requested amount for this activity was not justified.

Question: What does the agency hopes to accomplish through each of these activities and the budget breakout for each of these activities?

Answer: I believe the CPSC's current appropriation is sufficient to conduct these activities.

Transparency in the Civil Penalty Process

I am hearing concerns that the Commission is not transparent or collaborative in the civil penalty process. I believe there is a need for more clarity as to how the Commission comes up with its penalties.

Question: How is the Commission addressing concerns about the need for more transparency in the civil penalty process?

Answer: I see no effort on the part of the Commission to become more transparent as to the derivation of the amount of civil penalties. The most recent penalty settlement, which relates to Gree dehumidifiers, is a case in point. The penalty is the largest allowed by statute and the largest by far in CPSC history, yet the accompanying settlement agreement does little to explain the justification for such an amount. The case involved extensive property damage but no deaths or even injuries. I voted against the settlement on several grounds, including the failure to justify the amount.

Question: What specific steps can the Commission take with regards to providing more information about mitigating factors to make the process more predictable?

Answer: I believe the Commission could do more to shed light on the process. For example, the Commission could address in detail how various mitigating (and aggravating) factors will affect the amount of the penalty sought.

Question: Does the Commission provide written explanations of the basis for penalties sought?

Answer: The Commission does not provide the public with any written explanation of the penalty amount sought or of the settlement amount. The Commission sends a “show cause” letter to the entity accused of a violation. These letters generally contain a discussion of the penalty factors, but there is little or no consistency in how the specific factors are applied in a specific case. Outside counsel often comment on the apparent unwillingness by the Agency to negotiate and justify the amount of the civil penalty. Once a case has been settled, the Office of General Counsel forwards a recommendation for approval to the Commission. This document normally contains a discussion of the penalty factors established by statute or regulation. However, the application of the factors to the specific case is often unsatisfying and is not made public. The settlement agreement itself is made public but it does not provide any written explanation of the penalty amount apart from the staff’s recitation of charges.

Question: In the civil penalty assessment process, how does the Commission explain the factors it considers in the civil penalty process, including mitigating factors, to determine penalty amounts?

Answer: The Commission does not provide any public explanation of how it has applied the penalty factors in a specific case.

Question: Does the Commission believe the detailed explanations of how it reaches its civil penalties are sufficient?

Answer: I have voted against most of the penalty settlements that have been concluded during my tenure as a commissioner. I do not think the settlement agreements would enable even the closest students of CPSC penalties to understand how the amount was justified. For example, based on the facts disclosed in the recent *Gree* settlement agreement, I do not think that 1 in 100 CPSC practitioners would imagine that this case warranted the highest penalty in CPSC history. In addition, I think that threats of 7-figure civil penalties and lack of transparency only contribute to the adversarial and antagonistic relationships that ultimately harm consumer safety.

Question: Has the Commission proposed any recommendations regarding its civil penalty process to make it more transparent and collaborative?

Answer: I am not aware of any Commission proposal to improve the process.

Table Saws

The Commission is considering a rulemaking on table saws to make “flesh-sensing” technology mandatory for all table saws and plans to move on this rule in September 2016. There is concern that the proposed table saw rule creates a sole source monopoly for one company which would preclude others from developing and producing flesh-sensing technology without infringing on existing patents.

Question: Shouldn't concerns about a monopoly be a substantial factor when considering a mandatory standard?

Answer: Yes. The Consumer Product Safety Act requires standards to be stated in terms of performance requirements, not design requirements. The Commission has traditionally sought to avoid setting any standard that creates a monopoly.

Question: What weight will the Commission give to the possibility that a mandatory standard could create a monopoly?

Answer: I cannot speak for the staff or the Commission as a whole, but I believe that the Commission would make a great effort to avoid creating a monopoly.

Question: At what point do the concerns over creating a monopoly override the mandatory standard?

Answer: I believe that the current statutory framework provides strong protection against creation of a monopoly through adoption of a mandatory standard.

Eliminating options in the marketplace has the potential to lead to unsafe, homemade configurations that may substantially increase injury rates.

Question: How does the Commission reconcile its intent to reduce injury rates through a new mandatory standard, with the possibility of eliminating the most popular category of table saws from the market and the likely resultant increase in injury rates?

Answer: I believe the current statutory framework would require the Commission to consider offsetting injury increases that could result from a proposal.

Question: With the possibility of increases in injuries from homemade configurations of table saws, has the Commission considered reevaluating the risks of the rulemaking?

Answer: The Commission's FY 2016 operating plan still calls for a staff proposal by the end of the current fiscal year.

Question: Has the Commission reevaluated its plan to vote on the proposed table saw rule in September?

Answer: The Commission's operating plan calls for a staff proposal by the end of the current fiscal year.

Petition Regarding Flame Retardants

The Commission is currently considering a petition that requests the agency to evaluate a broad range of chemicals, organohalogen flame retardants, in hundreds of products. These chemicals are already being evaluated by U.S. EPA under its Toxic Substances Control Act (TSCA) Work Plan Chemicals Program.

Question: Will the Commission carry out this petition?

Answer: The Commission has already sought comments from the public on whether to grant the petition. The next step is for the staff to develop a briefing package on the subject. Usually, such a briefing package will contain a recommendation to grant, deny or defer the petition. Complicating the process in this case is the immense scope of the petition, which covers more than 80 different chemicals and is not limited even to chemicals that currently exist.

Question: What resources will the Commission dedicate to conduct a review of products?

Answer: If the Commission grants the petition, it will be launching one of the most expensive and time-consuming efforts in CPSC history.

Question: Has the Commission consulted with the EPA?

Answer: I am advised by staff that it has consulted with EPA on the topic of flame retardants. I am not certain to what extent and whether the engagement with EPA was incidental to another topic or issue.

Phthalates Rulemaking

Question: Is the Commission requesting any additional funding or resources in FY17 to complete the phthalates rulemaking as proposed in 2014?

Answer: The Commission has not sought any additional funding specifically for this purpose.

Question: What is the timing for the final rule?

Answer: The Commission's FY 2016 Operating Plan calls for the staff to submit a draft final rule to the Commission by the end of this fiscal year.

APPENDIX

A



Staff Report

**To the Committees on Appropriations of the House and
Senate on the Status of CPSC Efforts to Provide Third
Party Testing Burden Reduction While Assuring
Compliance**

March 28, 2016

**Report to the Committees on Appropriations of the House and Senate on the
Status of CPSC Efforts to Provide Third Party Testing Burden Reduction
While Assuring Compliance**

1 Introduction

The House of Representatives Report 114-194, *Financial Services and General Government Appropriations Bill, 2016*, included the following section:

Test Burden Reduction.-The fiscal year 2015 enacted bill provided \$1,000,000 for test burden reduction and directed CPSC to report to the Committee on its efforts to work with the regulated community and identify steps CPSC can take to reduce third-party testing costs while still assuring compliance. The Committee is disappointed by the limited scope of the Commission's report and its failure to make real strides towards tangible test burden reduction. The CPSC has identified a significant number of opportunities for test burden reduction, yet there continues to be no meaningful relief. The Committee provides another \$1,000,000 in fiscal year 2016 for third-party test burden reduction and urges the Commission to take actionable steps to provide demonstrable relief from the burdens of third-party testing. The Committee directs the Commission to provide quarterly reports updating the Committees on Appropriations of the House and Senate on its efforts to reduce the costs of third-party testing, including any that the Commission has chosen not to pursue.¹

This document is the required March 2016 quarterly report.

2 CPSC Fiscal Year 2015 Operating Plan

The Commission was working on burden reduction efforts before the appropriations report language, as shown in FY 2015 Operating Plan², which included the following project:

Burden reduction consistent with assuring compliance

This project provides funding, as specified by Congress in Public Law No. 113-508, for ongoing and expanded efforts toward providing meaningful reduction of third party testing costs of children's products consistent with assuring compliance with all applicable rules, regulations, bans, and standards. During the fiscal year, and within the available funding level, staff will prepare for Commission consideration a draft notice of proposed rulemaking (NPR) that addresses reduction of third party testing costs on as many of the following categories as staff determines can be accomplished consistent with assuring compliance:

¹ <https://www.congress.gov/114/crpt/hrpt194/CRPT-114hrpt194.pdf>.

² <http://www.cpsc.gov/Global/About-CPSC/Budget-and-Performance/FY2015OperatingPlannew.pdf>.

- Component Part Testing Update – Heavy Metals in Toys;
- Determinations Expansion – Heavy Metals in Toys;
- Determinations Expansion – Phthalates;
- Fourier Transform Infrared Spectroscopy (“FTIR”) Study Expansion – Phthalates Testing;
- Determinations Expansion – Lead;
- Determinations Clarification – Textiles dyes/prints; and
- Equivalency – Toy Standards.

The status of the items is presented below. CPSC notes that work from FY 2015 continued into FY 2016.

3 CPSC Fiscal Year 2016 Operating Plan

The Commission’s Fiscal Year 2016 Operating Plan³ includes the following project listing an NPR and two Final Rules (“FRs”):

25727 - Burden Reduction/Assure Compliance

This project provides funding, as specified by Congress in the Consolidated Appropriations Act 2016, for ongoing efforts toward potentially providing meaningful reduction of third party testing costs of children’s products consistent with assuring compliance with all applicable rules, regulations, bans, and standards. During the fiscal year, and within the available funding level, staff will prepare for Commission consideration draft Federal Register notices and supporting briefing packages that address reduction of third party testing costs on as many of the following categories staff determines that a reduction in third party testing costs can be accomplished consistent with assuring compliance:

- Determinations Expansion – Heavy Metals in Toys (FR)
- Determinations Expansion – Specific Plastics (NPR)
- Determinations Expansion – Lead (FR)

Staff will also continue to work on advancing the state of technology for Fourier Transform Infrared Spectroscopy (FTIR) for phthalates testing.

The status of these items is presented below.

4 Status of Effort

4.1 Component Part Testing Update – Heavy Metals in Toys

This effort concerns CPSC’s component part testing rule, 16 C.F.R. part 1109 (“1109 rule”). The 1109 rule allows testing at the component part level for compliance to an applicable product safety rule when the entire product is not needed for that test. Tests for chemicals

³ Available at: <http://www.cpsc.gov/global/about-cpsc/budget-and-performance/2016opplan.pdf>.

(e.g., lead, phthalates, the solubility of elements listed in Table 1 of ASTM F963-11⁴ (“Toy Standard”) for toys), and certain other mechanical or performance tests can be performed at the component part level. The regulated community has expressed some uncertainty about whether component part testing can be used to assess compliance with these Toy Standard requirements.

In Fiscal Year 2016, CPSC finalized an amendment to the 1109 rule to clarify that component part testing is allowed to determine compliance with the ASTM F963-11 solubility requirements, and for any other test for which the finished product is not required. (81 FR 2, January 4, 2016).⁵

4.2 Determinations Expansion — Heavy Metals in Toys

Table 1 of the Toy Standard⁶ requires that substrate materials of certain toys pass a solubility test for eight elements.⁷ Because these toys are children’s products, third party laboratory testing is required.

In Fiscal Year 2016, CPSC finalized a rule, 16 C.F.R. part 1251, *Toys: Determination Regarding Heavy Elements Limits for Unfinished and Untreated Wood*. (80 FR 78651, December 17, 2015).⁸ This rule exempts unfinished and untreated wood from third party testing to determine compliance with the ASTM F963-11 solubility requirements.

4.3 Determinations Expansion — Phthalates and Determinations Expansion — Specific Plastics

Phthalates are synthetic chemicals and are applied intentionally to materials to “plasticize,” or soften them. The CPSIA prohibits children’s toys and child care articles from containing more than 0.1 percent of certain phthalates. Manufacturers must conduct third party testing to certify that children’s products meet this requirement. CPSC staff engaged a contractor to study the production, use, and disposition of phthalates in consumer products. In addition, the contractor researched four specified plastics⁹ to assess whether those specified plastics contain more than the maximum allowable level of phthalates.

CPSC staff is developing a draft NPR recommending that the Commission determine that the four plastics do not contain phthalates above the limit specified in section 108 of the CPSIA (0.1 percent, or 1,000 parts per million (“ppm”)), and thus, do not require third party testing for use in children’s toys and child care articles. The draft NPR is due to the Commission in FY 2016.

⁴ *Standard Consumer Safety Specification for Toy Safety*, found at: <http://www.astm.org/Standards/F963.htm>.

⁵ <https://www.gpo.gov/fdsys/pkg/FR-2016-01-04/pdf/2015-33068.pdf>.

⁶ This standard was made mandatory via section 106 of the CPSIA.

⁷ The elements are antimony, arsenic, barium, cadmium, chromium, lead, mercury, and selenium.

⁸ <https://www.gpo.gov/fdsys/pkg/FR-2015-12-17/pdf/2015-31723.pdf>.

⁹ The plastics are polypropylene, polyethylene, high impact polystyrene, and acrylonitrile butadiene styrene.

Additionally, CPSC staff has engaged a contractor to study the presence of phthalates in additional specified plastics. CPSC staff has also engaged a contractor to study the presence of lead, phthalates, and the elements in Table 1 of the Toy Standard in specified manufactured fibers. The contractor's reports are due to CPSC at the end of FY 2016.

4.4 FTIR Study Expansion — Phthalates Testing

Manufacturers and testing laboratories have informed CPSC that the approved test methods for phthalates are the most expensive tests to conduct for required third party testing. If an inexpensive method could be developed to screen out materials with no phthalates at the concentration limit specified in section 108 of the CPSIA, numerous expensive third party tests could be avoided. Only materials with phthalate detection above the concentration limit would be subject to additional testing to determine if a prohibited phthalate was present.

CPSC staff has awarded a multiphase contract for research and development ("R&D") services to develop an FTIR analyzer to reduce the cost, time, and labor associated with phthalates measurements. This analyzer will be capable of detecting phthalates at the 0.1 percent concentration level within the subject material. The Phase 1 effort result, a prototype analyzer, is due to be delivered by the contractor for CPSC evaluation in FY 2016. A Phase 2 contract for approximately \$500,000 is expected to be awarded in late FY 2016, based on successful achievement of the Phase 1 performance objectives for the prototype unit. The Phase 2 effort will continue developing improvements in the prototype device's design and technology focusing on several key performance parameters including repeatability, field use reliability and accuracy, and phthalate discrimination enhancements. Successful completion of Phase 2 performance objectives would lead towards a possible Phase 3 effort for approximately \$500,000 in FY 2017 to further refine the device for commercialization and deployment.

4.5 Determinations Expansion — Lead

Prior input from the regulated community has identified engineered woods (*e.g.*, plywood, particleboard, and medium-density fiberboard) as materials used in children's products that are unlikely to contain lead in excess of the limit in section 101 of the CPSIA (100 ppm). Children's products, toys, and child care articles made with engineered wood require third party testing for compliance to one or more of the materials listed in sections 101 (lead), 106 (the Toy Standard elements), or 108 (phthalates) of the CPSIA. CPSC staff engaged a contractor to study the potential presence of lead, the elements in Table 1 of the Toy Standard, and phthalates in engineered woods. CPSC staff recently received the contractor's report and plans to make the report publicly available April 2016.

CPSC staff's analysis of the report will inform staff's decision on whether to recommend that the Commission determine that specific engineered wood-based materials identified in the report that do not contain one or more of the elements listed in the CPSIA or in the Toy Standard, and thus do not require third party testing to assure compliance with the applicable children's product safety rule.

4.6 Determinations Clarification — Textiles Dyes/Prints

The regulation at 16 C.F.R. § 1500.91 lists materials that have been determined by the Commission not to contain lead at concentrations above 100 ppm. These materials do not require third party testing for use in children's products. Some members of the regulated community have expressed uncertainty about the meaning of the wording of one part of this regulation. These members sought clarification about testing exemptions for printed textiles.

In Fiscal Year 2016, CPSC finalized an amendment to 16 C.F.R. § 1500.91, to clarify that fabrics produced using printing technologies to apply dyes are included in the list of materials that do not require third party testing to determine compliance with the lead content limit.¹⁰

4.7 Equivalency — Toy Standards

The Chairman's staff, which included a child behavioral scientist permanent staff member and a toxicologist on detail, both with extensive experience with the Toy Standard, reviewed the most widely used toy standards having a global influence (ASTM F963, EN 71, and ISO 8124), to identify commonalities and differences. The Chairman's staff discussed the standards' provisions with officials in the European Union and Health Canada, and with U.S. trade association representatives. To date, the Chairman's staff's work does not support a finding of equivalence across these standards because of significant differences in test methods.

The Chairman's staff also explored the concept of compiling an alternative standard composed of the most rigorous test methods from each toy standard, and discussed the feasibility of this approach with interested stakeholders. The Chairman's staff determined that the development of an alternative standard would be unlikely to result in reduced third party testing costs.

¹⁰ This amendment was published in the same *Federal Register* notice as the amendment to 16 C.F.R. part 1109 discussed in section 4.1. See footnote 4.

5 Status Summary

The status of staff burden reduction efforts is summarized below:

Item	Description	Deliverable	Due/Completion Date
4.1	Component Part Testing Update — Heavy Metals in Toys	Final Rule amending 16 C.F.R. part 1109	Completed January 4, 2016
4.2	Determinations Expansion — Heavy Metals in Toys	Final Rule 16 C.F.R. part 1251	Completed December 17, 2015
4.3	Determinations Expansion — Phthalates and Determinations Expansion — Specific Plastics	Draft NPR on determinations for four specified plastics	FY 2016
		Contractor technical reports on phthalates in additional plastics and lead, the Toy Standard elements and phthalates in manufactured fibers	FY 2016
4.4	FTIR Study Expansion — Phthalates Testing	Phase 1 prototype analyzer for CPSC evaluation	FY 2016
		Phase 2 FTIR contract awarded (\$500,000)	
4.5	Determinations Expansion — Lead	Contractor technical report	Received, March 2016
4.6	Determinations Clarification — Textiles Dyes/Prints	Final Rule amending 16 C.F.R. § 1500.91	Completed January 4, 2016
4.7	Equivalency — Toy Standards	Not feasible for burden reduction purposes	N/A

MONDAY, FEBRUARY 29, 2016.

GENERAL SERVICES ADMINISTRATION

WITNESS

HON. DENISE TURNER ROTH, ADMINISTRATOR, GENERAL SERVICES ADMINISTRATION

Mr. CRENSHAW. Well, we are going to get started. The hearing will come to order.

Welcome to everyone. I would like to welcome General Services Administrator Denise Roth to the hearing today.

Last year, you were here after just a month on the job. Now, you have been on the job for over a year. So we are happy to welcome you back.

Ms. ROTH. Thank you.

Mr. CRENSHAW. Everybody knows this is a Leap Year, right? And so today is Leap Day. And with that in mind, I think we should jump right in.

I wanted to see if Mr. Serrano was paying attention.

Mr. SERRANO. Can you say that in Spanish?

Mr. CRENSHAW. No.

The budget request today is for \$10.18 billion for the Federal Buildings Fund, which is less than 1 percent below enacted. So that is less than last year. But while your request appears to be flat, it spends \$371 million more in rental income from agencies than it did last year.

So I caution the GSA from growing overzealous in its requests. In the 2016 omnibus, GSA received an unprecedented 215-percent increase for construction and acquisition for numerous construction problems. And this was a significant increase, but this level of spending should not be viewed as the new norm.

Therefore, I look forward to discussing GSA's request for new construction in fiscal year 2017.

This brings me to the administration's request for the FBI headquarters consolidation. At last year's hearing, we discussed GSA's proposal to exchange the FBI's current headquarters at the Hoover Building for a new 2.1-million-square-foot facility in the greater Washington area. It was my understanding when GSA started to pursue such a complicated property exchange of unprecedented size that GSA was convinced that the value of the Hoover Building would be more than enough to pay for a new FBI headquarters. However, as we all know, the value of anything is whatever the market will bear. And the market has spoken so far, and the value of the Hoover Building is \$1.8 billion less than what GSA expected.

So, today, in addition to the \$390 million provided in the omnibus, the administration is asking this subcommittee for \$759 million and another \$646 million from the Commerce, Justice, Science

Subcommittee. So that concerns me a little bit about the size of this request. And I still wonder whether GSA has the expertise to execute such a complicated transaction. So we will have a frank discussion about that today.

To date, the Congress has appropriated \$1.6 billion for full consolidation of the Department of Homeland Security headquarters at St. Elizabeths. The request includes another \$267 million for 2017. As GSA moves forward with its enhanced plan for St. Elizabeths, I hope to hear more about the GSA's continued effort with the DHS to reduce construction costs and increase project efficiency.

The President's budget also seeks to establish a \$3.1 billion information technology modernization fund within GSA to replace legacy IT systems all across the government.

Now, as the subcommittee that oversees the Office of Personnel and Management, we know as well as anyone about the numerous cybersecurity and operational risks that using an old system poses. We have been continually supportive of funding IT upgrades as part of the agency's annual budget request. However, I question the proposed \$3 billion in mandatory funding and \$100 million in discretionary funding—for what exactly we don't know, because the administration has not formally transmitted legislative language to the Congress.

What I do know is that agencies should be requesting funding to refresh their IT systems on a regular basis as part of their regular budget requests. The IRS is a good example of an agency that chooses to spend less and less on rudimentary IT and is experiencing more and more hiccups.

So, now, in the fiscal year 2016 omnibus, the committee provided GSA with construction funding to address longstanding needs and dire conditions at Federal courthouses all around the country. The funding provided is important to maintain an open, accessible, and well-functioning judicial system. Today, I hope to learn more about how GSA will work with the Judiciary Branch to ensure the courts' needs are best met while also safeguarding the investment of the American taxpayer.

And, finally, I want to emphasize this committee's commitment to shrinking the Federal footprint through reductions in GSA's inventory of leased and owned space. Over the past several years, this committee has provided significant funding for GSA consolidation activities, and I hope to hear today how GSA is using those resources to reduce space, lower rental costs, serve your customers, and ultimately save the taxpayers' dollars.

Once again, welcome, Administrator Roth. Appreciate your service. Look forward to your testimony.

But, first, let me turn to the ranking member, Mr. Serrano, for any opening remarks he might make.

Mr. SERRANO. Thank you. And a happy 29th day of the month to you. So somebody who is born today celebrates yesterday or tomorrow?

Mr. CRENSHAW. Don't ask me.

Mr. SERRANO. Okay.

Mr. CRENSHAW. But I do know that it takes 365.2526 days to go around the sun.

Mr. SERRANO. Mr. Yoder, you should have warned me not to ask.

Mr. YODER. I am taking notes.

Mr. SERRANO. Thank you, Mr. Chairman. I would like to join you in welcoming the Administrator of the General Services Administration before our subcommittee.

You were confirmed by the Senate last year after our hearing with you, so I really want to congratulate you on transitioning to this role more permanently.

GSA plays a critical role in making sure our government is running efficiently and effectively, that it is open and transparent to our citizens, and that our Federal agencies have the resources they need in order to succeed. You combine a variety of roles in one agency: landlord, project manager, procurement specialist, real estate agent, IT specialist. The list goes on and on and on.

Although you don't see the GSA's name mentioned as much in the media and the press, this variety of roles shows just how critical you are to how our government operates. And I think this subcommittee recognizes that, as well.

Last year, this committee included significant new funds for the construction of new Federal buildings, including several courthouses. I am interested to know how these projects are moving forward and whether the large increase has been a problem in terms of ensuring appropriate personnel to oversee project management.

Your budget request this year is slightly smaller but, really, only in comparison to last year's final numbers. Your budget includes funding for several construction projects as well as numerous important repairs and alterations which will help reduce the Federal backlog in both areas. You also include funding for several new initiatives, two of which I imagine we will spend some time discussing today.

One project that GSA has completely changed positions on is the FBI headquarters. Last year, this subcommittee was told that the General Services Administration planned to use their exchange power to raise funds to purchase a new FBI campus in either Maryland or Virginia. We were specifically told at last year's hearing that no appropriated funds would be needed for this project and that this committee had no role to play. Well, something has clearly changed, since your budget request this year includes a request for \$759 million in appropriated funding for the construction of a new FBI building.

Combined with the FBI's request of \$646 million for the same project, we are facing the exact problem that Chairman Crenshaw and I mentioned last year: the expectation that the Appropriations Committee is going to clean up the mess when the exchange authority doesn't raise the funds that are necessary for this project.

The building hasn't even been sold yet, and this request already tells us that, whatever the proceeds are, they won't be near enough. On top of that, it has not been made clear to this subcommittee what the scope of this project is and whether the funds requested this year are sufficient to fully construct the project.

It is also somewhat troubling to receive this request when we appear to be years away from potentially breaking ground, unless there is an imminent announcement that we are unaware of. I expect we will have a lot of discussion about this issue today.

A new initiative requested this year is the IT modernization fund. I fully support efforts to modernize our government IT systems, but this request has not yet been authorized, leaving us with requests for money that GSA cannot do anything with if we actually appropriate it. I would be very open to conversations about how to make our IT procurement system more nimble and responsive to changing technologies, but I am not sure if this particular request is the way to do it.

That said, by and large, I support the numerous efforts GSA is making to ensure the Federal agencies are accountable and effective organizations. I look forward to discussing these and more details with you today, and this should be a very interesting hearing.

Thank you, Mr. Chairman.

Mr. CRENSHAW. Thank you.

Now I would like to recognize Administrator Roth for your statement. If you could keep it in the neighborhood of 5 minutes. Your full statement will be inserted into the record. So the floor is yours.

Ms. ROTH. Thank you, sir.

Good afternoon, Chairman Crenshaw, Ranking Member Serrano, and members of the committee. Thank you for inviting me to today's hearing on the President's fiscal year 2017 budget request for the General Services Administration.

First, I would like to thank the committee for the robust funding provided to the General Services Administration in the fiscal year 2016 appropriations bill. We will continue to ensure that GSA utilizes these funds wisely and efficiently, as befitting the trust you have placed in our agency.

Overall, the President's fiscal year 2017 budget builds on last year's progress of prioritizing agency real estate consolidations and infrastructure investments to maximize space utilization, improve security, expand trade, and spur economic development within communities across the Nation. In addition, this budget request seeks to enhance the cybersecurity and efficiency of the Federal Government's IT infrastructure by modernizing IT legacy systems.

Within the Federal Buildings Fund, I would highlight three important projects that will strengthen our national security infrastructure and benefit the American taxpayer.

First, GSA seeks \$759 million to support the construction of a new headquarters facility for the FBI. This new facility will consolidate FBI employees from 13 leased locations across the national capital region within a new, modern, and secure facility. GSA's fiscal year 2017 budget request, in conjunction with the FBI's \$646 million request, will allow GSA to award a contract for design and construction of a new FBI headquarters by the end of this calendar year.

Second, GSA is requesting \$267 million to continue executing the enhanced plan for the consolidated DHS headquarters, which will bring FEMA to the St. Elizabeths west campus, completing nearly 80 percent of this project. The enhanced plan for St. Elizabeths, when completed, will reduce the Federal footprint by nearly 10 million square feet and save more than \$4 billion through avoided lease costs.

Third, GSA is requesting \$248 million for the second and final phase of the Calexico West Land Port of Entry modernization,

which will improve the security of our Nation's borders as well as promote expanded commerce and trade and support local economic development.

All of these investments have a significant impact on the communities in which these projects are located. GSA recognizes its role as an economic catalyst in these communities and works with stakeholders to align investments with local community planning and economic development efforts.

We also must use the Federal Buildings Fund to support the evolving missions of our partner agencies and combat the growing cost of real estate. Through consolidation and innovative space solutions, we have reduced the lease inventory by more than 3 million rentable square feet since 2012, with a projected reduction of 3 million additional rentable square feet by the end of fiscal year 2017.

GSA has also partnered with agencies to accelerate the disposal of excess property. In fiscal year 2015, we helped agencies dispose of 172 properties, generating \$56 million in proceeds.

Beyond our brick-and-mortar infrastructure is our information technology infrastructure, on which the government and the global economy depends. Reliable IT is vital to all of the services the government provides. However, many Federal agencies are unable to effectively modernize IT infrastructure and mission-critical systems due to large upfront capital investment needs and the increasing share of costs that maintaining these older systems occupy in technology budgets.

To address these issues, the budget includes a request to establish a \$3.1 billion Information Technology Modernization Fund, which would be used to retire and modernize legacy information technology systems, to improve cybersecurity and the delivery of services, as well as to reduce costs.

In closing, GSA has made significant progress in fulfilling our mission to deliver the best value in real estate, acquisition and technology services to government and the American people. The President's fiscal year 2017 request will enable us to move forward along this trajectory of providing more efficient and effective services at a lower cost so that agencies can focus on their crucial missions.

Thank you for this opportunity to be with you today, and I look forward to answering your questions.

[The information follows:]

**STATEMENT OF
DENISE TURNER ROTH
ADMINISTRATOR
U.S. GENERAL SERVICES ADMINISTRATION
BEFORE THE
SUBCOMMITTEE ON FINANCIAL SERVICES AND GENERAL GOVERNMENT
COMMITTEE ON APPROPRIATIONS
UNITED STATES HOUSE OF REPRESENTATIVES**

February 29, 2016

I. Introduction

Good afternoon Chairman Crenshaw, Ranking Member Serrano, and Members of the Committee. Thank you for inviting me to today's hearing on the President's Fiscal Year 2017 budget request for the U.S. General Services Administration (GSA).

First, I would like to thank the committee for GSA's Fiscal Year 2016 appropriations. The funding this committee provided is crucial, and will allow GSA to make critical investments that will enable our partner agencies to more effectively fulfill their missions and at the same time help develop critical infrastructure. We will work diligently to ensure that monies are spent wisely and efficiently, as befitting the trust you have given our agency. I look forward to continuing our partnership for the 2017 fiscal year.

Together, we have invested in the nation's infrastructure, made dramatic improvements to the performance of federal buildings and cut long-term real estate costs. We have made the acquisition of goods and services simpler and more cost-effective through increased data and new contracting vehicles. Across the government, we have significantly improved the delivery of information technology, advanced evidence-based decision-making through benchmarking, and improved administrative functions by strengthening shared services. Finally, our consolidation efforts have streamlined GSA's operations and reduced internal operating costs.

The President's FY 2017 Budget builds on last year's progress by prioritizing agency real estate consolidations and infrastructure investments to maximize space utilization, improving border security, expanding trade, and spurring economic development within communities across the nation. Importantly, this budget request will also enhance the cybersecurity and efficiency of the federal government's IT systems by modernizing IT legacy systems. Finally, the budget will also provide the necessary services to the

President-Elect and Vice President-Elect during the Presidential Transition. All of these activities will move GSA forward along the reform trajectory to reduce costs, better serve our agency partners, and catalyze economic activity throughout the country.

II. Transforming the Federal Real Estate Landscape

Funded by rent collections, Congress created GSA's Federal Buildings Fund (FBF) in 1972 to provide a dedicated source of revenue for needed investments and to enable GSA to execute its federal real estate mission using best practices found in the private sector. In partnership with this committee we have begun to restore the necessary levels of investment in our nation's public buildings.

For Fiscal Year 2017, GSA requests approximately \$10.2 billion in FBF New Obligational Authority, which is equal to the anticipated revenue collections, meaning "zero net budget" authority. A zero net budget authority request for both years will ensure a self-sustaining fund and provides stable funding for long term projects.

Capital Project Transparency

To provide greater transparency, the President's budget includes a long-term capital plan and an advanced funding request for FY 2018 that provides insight into GSA's top real property investment priorities. The dedicated resources of the FBF, as outlined in the long-term capital plan, will support:

- 1) Two Headquarters Consolidation projects. One for the Federal Bureau of Investigation and one for the Department of Homeland Security Headquarters. When completed, these projects will enhance the nation's security, save taxpayers billions annually and significantly reduce the Federal government's footprint.
- 2) Eight mission-critical border station modernization projects that will improve the nation's security and make trade more efficient, promoting economic growth and creating jobs; and
- 3) Four environmental cleanup projects that will reduce public health risks and improve and protect natural resources;
- 4) Funding for minor repairs and alterations and special emphasis programs which will support more than 100 small repair and alteration projects that

will facilitate space consolidation, protect the health and safety of building occupants, improve federal service delivery, and save taxpayers money;

Headquarters Consolidation

The President's FY 2017 Budget Request continues GSA's focus on creating long-term cost savings for taxpayers while strengthening our national security infrastructure. Specifically, this Budget invests in two major projects to consolidate headquarters functions for the Federal Bureau of Investigation and the Department of Homeland Security, saving billions of taxpayer dollars over the long term.

First, GSA seeks \$759 million to support the construction of a new headquarters facility for the FBI. This new facility will consolidate FBI employees from 13 locations across the National Capital Region within a new, modern, and secure facility that is designed to enhance FBI's national security, intelligence, and law enforcement missions.

We sincerely appreciate the \$75 million provided by the Committee in FY 2016 which demonstrates our shared support for this critical project. The President's FY 2017 request for the FBI Headquarters within the GSA budget, paired with \$646 million in the FBI's FY 2017 construction budget, as well as the value of the J. Edgar Hoover Building and the prior year resources, will allow GSA to award a contract for design and construction of a new FBI headquarters by the end of this calendar year.

The new FBI Headquarters facility will be located in one of three previously announced sites: Greenbelt, Maryland; Landover, Maryland; or Springfield, Virginia. The proposed facility will support information sharing, collaboration, and integration of strategic priorities, and will allow the FBI to realize significant mission synergies as a result of co-location. The facility will accommodate approximately 11,000 personnel and include state-of-the-art IT infrastructure that is key to FBI's national security mission.

GSA released the second phase of the Request for Proposals in January of this year. Bidders will submit their initial proposals in June. We will be sure to continue to keep this Committee informed as the project moves forward.

The President's FY 2017 Budget Request also includes \$267 million to continue executing the Enhanced Plan for the Consolidated Department of Homeland Security Headquarters at St. Elizabeths in Washington, D.C. Again, I'd like to thank the members of this Committee for supporting full funding of the President's FY 2016 request for this project, allowing GSA and DHS to refocus our efforts at St. Elizabeths to reduce construction costs, increase long-term savings, and complete the project on an accelerated track in accordance with the Enhanced Plan.

The Enhanced Plan for DHS Headquarters Consolidation, when completed, will reduce the federal footprint by nearly 2 million square feet and save taxpayers more than \$1 billion. The current project plan eliminates \$800 million in construction costs, significantly increases utilization on the campus by fitting more employees in less space, and completes construction by FY 2021.

The FY17 budget request of \$267 million for this project will allow GSA to construct the new headquarters for FEMA on the West Campus of St. Elizabeths, rehabilitate buildings needed to accommodate components of the Under Secretary for Management, continue the design for Immigrations and Customs Enforcement housing, and advance historic preservation activities.

Enhancing Border Security and the local Economy

The President's Budget Request also includes investments to support border security and improved trade with \$248 million for the second and final phase of the Calexico West Land Port of Entry modernization and improvement project, which will improve the security of our nation's borders as well as promote expanded commerce and trade, as well as local economic development opportunities.

All of these investments have a significant impact on the communities in which these projects are located. GSA recognizes its role as an economic catalyst in these communities, and works with these communities to align investments where possible with local community planning and economic development efforts.

Smarter Capital Investments

In the current fiscal environment, it is essential that GSA maximize the use of the Federal Buildings Fund to support the evolving missions of client agencies, and combat the growing cost of real estate. The budget request includes funding to help agencies consolidate and reduce space, improve the safety and condition of our public buildings, and support the disposal of unneeded government assets.

GSA is working with our partner federal agencies to review and optimize space in order to reduce the federal government's footprint and help agencies shift limited resources to mission rather than real estate costs. Since FY2012, GSA's efforts have resulted in a reduction of the leased inventory by more than 3 million rentable square feet, with a projected reduction of 3 million additional rentable square feet by the end of FY 2017. GSA has advanced these efforts by right-sizing space, encouraging desk-sharing, enabling and supporting mobile work, and shifting from traditional office space to a more flexible, open-plan environment.

GSA has also partnered with agencies to accelerate the disposal of excess property. In FY15, we have helped agencies to dispose of 173 properties through both sales -- generating more than \$56 million in gross proceeds -- and transfers to state or local governments that will put unneeded federal properties to better use.

III. Modernizing Legacy IT Systems and Enhancing Cybersecurity

The continued and pervasive use of legacy IT systems by federal agencies results in increased cybersecurity risks to federal IT systems, downgraded service for the American people and businesses, increased personnel costs, and missed opportunities. These systems are more likely than modern systems to operate with vulnerabilities that are technically difficult or prohibitively expensive to address and could hinder an agency's ability to protect sensitive data. Many federal agencies are unable to effectively modernize IT infrastructure and mission critical systems due to large upfront capital investment needs and the increasing share of costs that maintaining these older systems occupy in technology budgets. Of the more than \$52 billion in Federal civilian IT spending planned for FY 2017, about \$37 billion or 70% is dedicated to the operations and maintenance of legacy investments.

To address these issues, the budget includes a request to establish a \$3.1 billion Information Technology Modernization Fund (ITMF), which would be used to retire and modernize legacy information technology systems to improve cybersecurity, improve the delivery of services, and reduce costs. The ITMF is designed to be a full cost recovery revolving fund that will provide a stable funding environment for agencies to ensure continuous improvement to their information technology systems and infrastructure.

GSA and OMB will work with agencies to develop IT modernization plans that build off private sector best practices in technology development and implement modern agile acquisition practices that will enable agencies to enhance the cybersecurity and service delivery of the federal government's technology. Ultimately, modernization plans will be evaluated and prioritized for funding based on greatest risk profile, government-wide impact, and probability of success.

This centralized effort will achieve a greater and more rapid impact on the efficiency, security, and governance of federal IT, compared to the disaggregated funding of single-agency projects, by strategically prioritizing investments across government. All funded projects will be subject to regular project oversight and monitoring by a team of IT experts in GSA and an independent project review board chaired by the Federal Chief Information Officer. From the start, agencies will be able to leverage GSA expertise and assistance in the development of their modernization proposals, as well

as throughout the implementation of the project, to ensure projects meet milestones and only receive funding allocations tied to successful iterative development.

IV. Bringing Transparency and Savings to Federal Contracting

The U.S. Government is the single largest buyer in the world, with annual spending on goods and services close to \$450 billion a year. That means the more we work together to drive consistent practices across our agencies, share information, and reduce duplication, the better the results for the American taxpayers.

GSA, working in concert with the Office of Federal Procurement Policy, is leveraging the buying power of the federal government to reduce the amount of time agencies spend procuring common goods and services. GSA's strategic sourcing vehicles have saved the government more than \$100 million annually and helped agencies save more than \$548 million since 2010, and we continue to work with agencies to increase utilization.

Building on the success of strategic sourcing, GSA and OMB are using category management to enable the federal government to buy smarter and more like a single enterprise. Category management involves identifying 10 core types of government spending and developing heightened levels of expertise to create streamlined solutions to better manage supply and demand within each of the categories. The objective is to increase efficiency and effectiveness while reducing costs and redundancies.

The 10 categories include important spending areas like IT, Transportation, Travel, and Professional Services, which make up \$270 billion -- or two-thirds -- of the total spend on goods and services. Each category will be led by a team of experts who will develop a common, government-wide strategy for smarter buying that will reduce contract duplication and drive greater efficiency and savings in the procurement of goods and services. To assist agencies and streamline the buying process, GSA is developing a Common Acquisition Platform that will house all acquisition categories and all the potential government-wide best-in-class contract solutions available across government within one site.

V. Improving Overall Government Performance

A more efficient government is a better government. With that goal in mind, GSA has consolidated administrative functions and focused GSA on core activities. By divesting our financial management line of business, rationalizing our IT portfolio, and improving our budget governance, GSA has realized significant operational savings. Since FY 2012, we have saved more than \$115 million on travel. Respectively, our efforts in financial management and human resources functions have allowed GSA to reduce the FY 2017 Working Capital Fund. These efficiencies, along with the completion of several one-time project costs incurred this fiscal year, amount to a nearly \$52 million decrease -- or 7.1 percent from the adjusted FY 2016 planned level.

GSA is developing smart policies that enable a more efficient government and providing tools and data to help agencies make smart decisions. For example, GSA co-led the first effort at benchmarking the efficiency and effectiveness of administrative functions across government, with the goal of finding the best value and driving agencies toward adoption of the best models available. GSA is also leading efforts to broaden the adoption and management of shared services. The budget requests \$5 million to support the Office of Unified Shared Services Management. The office serves as an integration body for the shared services environment, working across functions, providers, and consumers. This funding will enable stakeholders from across the government to deliver higher quality shared services to improve performance and efficiency throughout government.

VI. Conclusion

GSA has made significant progress in fulfilling our mission to deliver the best value in real estate, acquisition, and technology services to government and the American people. The President's FY 2017 budget request will allow us to meet that mission effectively and serve as a blueprint that will guide GSA into the future. I look forward to working in partnership with Congress to continue our progress. Thank you for the opportunity to appear before you today. I am happy to answer any questions you have.

Mr. CRENSHAW. Well, thank you very much.

And let me start the questions. I think you probably figured we would ask some questions about the FBI. Mr. Serrano mentioned in his opening statement, as did I, that when we met last year we had a pretty lengthy discussion about the whole concept of this exchange, swap.

And a couple questions. I guess to start with, what were you thinking last year was going to be the value of the Hoover Building? Did you have any idea what that might be? And did you have any idea of what it might cost to build 2.1 million square feet?

Ms. ROTH. Sir, we did have ideas that we have been working from. We have been avoiding talking about specific costs related to both the value of Hoover as well as the project overall, primarily because we are in an active procurement process currently.

Mr. CRENSHAW. How did you find out that the Hoover Building is worth \$1.8 billion less than you thought it might be?

Ms. ROTH. Let me say, and just in stepping back, the project itself and what we had before, both this committee as well as the other committee from FBI, is really a reflection of where the project is in terms of trying to achieve the full consolidation as well as FBI's requirement. And I would say that over the past year we have gotten a better understanding, as the project is coming into its maturity, of what the costs reflect.

And so we believe with the funding both we have received from this committee in fiscal year 2016 as well as the request that is pending, as well as with any cost offsets that we receive from the Hoover Building's value, would be reflective of what is needed for the project.

Mr. CRENSHAW. Well, last year \$291 million was appropriated as part of the omnibus. We were told that that would be it from the appropriations standpoint, that would get things started. Now, if you add up those two, it is about a billion-eight.

So I guess you can understand why we are a little surprised, can't you?

Ms. ROTH. Absolutely. And this has been an evolving project. And the part that I would point back to, in particular, is really what we are going to learn both from how the market values the cost of this project as well as the further understanding of the requirements of the project.

We have received clear indication that full consolidation for this project was supported and something that we needed to ensure was a priority as we brought this project to bear, and the requests are really reflective of that.

Mr. CRENSHAW. Well, how confident are you that the valuation of the Hoover Building is correct?

Ms. ROTH. We have worked very closely with FBI in terms of just—and this is really going to the requirements overall, but in terms of the valuation itself, we are really looking forward to what the market responds with.

And we have the responses due back from the developers by this summer. That is really going to be the first indication of how they are valuing the project. And we are going to—

Mr. CRENSHAW. Well, I mean, how do you know today that it is, like, \$1.8 billion less than you thought?

Ms. ROTH. Really because of the requirements. As we start to build out what the costs of the requirements are and the way that we have worked very closely FBI over the past year, that really has given us a sense, as well as—

Mr. CRENSHAW. So, do you have an appraisal of the Hoover Building?

Ms. ROTH. The appraisal we have on record is actually an older appraisal. We will likely do appraisals as we go through the process this year.

But, really, what we are looking for—what we have stood up is really compared between where the requirements are today from FBI and having worked closely with them, what we know about the sites themselves and having gotten through the environmental evaluation of them, and then what we will see in June as we get those responses back from the developers. That is really what we are lining up.

Mr. CRENSHAW. So I guess there are two sides to the equation. If you are going to do a swap or an exchange, you have to say what the Hoover Building is worth, right—

Ms. ROTH. Yes.

Mr. CRENSHAW [continuing]. And then how much is it going to cost to build this new 2.1 million square feet.

So it sounds like you didn't have a very good idea of what that was if you missed it by almost \$2 billion, right?

Ms. ROTH. I believe that what—the effort was really about an exchange to offset any request for appropriations. I mean, ultimately, to use the tool of the exchange and be able to get the full project would have meant that we didn't have to have an appropriations request.

I think, really, with having a full consolidation on the table, as well as the requirements as we understand them to really meet the mission of FBI, is reflective of the change that you are seeing.

Mr. CRENSHAW. Well, did you ever think about just selling the Hoover Building?

Ms. ROTH. Sure. And one of the things that we know is, with the exchange, we can assure that the proceeds from that project go into the new Hoover location.

Mr. CRENSHAW. But, you are going to do an exchange, right?

Ms. ROTH. Yes.

Mr. CRENSHAW. Did you think about the fact that if you are going to exchange the building, then the developer is going to have some carrying costs while he builds the building? Did you think about whether you should just sell the building, put the money in the bank, then go ask somebody to build a new one, and use part of the proceeds for that? How did you decide it was better to do a swap or an exchange than to just sell the building and then hire somebody to build you a new space?

Ms. ROTH. And oftentimes we have sold the properties and used, then, our budget request to go forward with a new project.

Ultimately, there are a couple aspects of this proposal that are different and unique. One of them is the fact that we are talking about the Hoover Building, which is on Pennsylvania Avenue, a rare place to get an opportunity to develop. I think that that was

part of bringing developers to the table and being interested in this project.

Ultimately, if we were to do a typical disposal, we would have to come back and ask for a larger appropriations request, certainly, as well as then go through the process of a new building overall. And, really, having the exchange as a part of this can offset what we have to ask this committee for.

Mr. CRENSHAW. Is this the biggest exchange you have ever done?

Ms. ROTH. This would be the largest.

Mr. CRENSHAW. Has GSA ever done any other exchanges?

Ms. ROTH. We have done other exchanges of varying scales. I think that those exchanges that we have been talking about in the recent past are the largest that we have seen in some time.

Mr. CRENSHAW. Do you have any idea of how many exchanges you have done in the last 10 years?

Ms. ROTH. In terms of this scale, we have not done an exchange of this scale.

Mr. CRENSHAW. So are you still comfortable that this is something that you have in-house capabilities to do, or is this something you are contracting with some outside folks? How are you handling this?

Ms. ROTH. Sure. As a part of all of our construction projects, we will definitely bring in expertise to help with various aspects, anything from evaluating the requests, the proposals themselves, to doing traffic studies—

Mr. CRENSHAW. For instance, last year, had you brought anybody in to give you an idea of what numbers we might be talking about? Because, again, we missed it by at least \$2 billion.

For instance, and along that line, you asked for another billion-four. How do you know what this new 2.1 million square feet of office space is going to cost? I mean, do you know that yet? Where do those numbers come from? And why is half of it from GSA and half of it from FBI?

Ms. ROTH. Well, what we do know is that, having worked with FBI very closely over the past year, having a good sense of their requirements, that is giving us a sense of what the costs are, just really how they are programming the space and how they plan to utilize it.

And this really has been very much a shared effort between us and FBI, and we have worked intensely over the past year. And it is part of the reason you are seeing the requests come from both agencies, because this is a shared effort. As well as just the number itself, as you point out, would be large overall, and definitely didn't want to overburden either budget request.

But at the end of the day, what is really going to tell us what we have for the project are those various pieces. What the requirements are is really setting the cost, ensuring that we are achieving a full consolidation as a part of this request, and then trying to, both with the appropriations and the FY 2016 funding and the offset of the value of Hoover, really bringing the project to bear.

Mr. CRENSHAW. How did you calculate the \$1.4 billion for the appropriation request this year?

Ms. ROTH. Part of it is set by the requirements of the full consolidation.

Mr. CRENSHAW. And who looked at that and decided that it was going to cost \$1.4 billion?

Ms. ROTH. We do use a team of experts to support our efforts at—

Mr. CRENSHAW. So you have that laid out. Is the 2.1 million square feet, is that right?

Ms. ROTH. Yes.

Mr. CRENSHAW. So now somebody said that is going to cost a little bit more than we might have thought. Because either you missed it on that side or you missed it on the value of the Hoover.

I mean, I hope you can appreciate our concern is when you come in and say, look, if we had \$300 million, we got a very valuable piece of property downtown, we can exchange it, somebody will build us a building, and that is going to be great, and then we still ask you what is the value, and nobody seems to know yet, other than the new estimate is we missed it by \$1.8 billion, it is going to be \$1.8 billion less than we thought, or somehow the office space is going to cost more.

I think, as stewards of the taxpayers' dollars, we got to have a better handle from you on where the money is going to go. So, I mean, other members might have questions, as well, but I did want to bring that up because I think that is something that we are going to have to really work through.

Ms. ROTH. Sure, Mr. Chairman. And it is not that we don't know what the project scope is. It really is a reflection of not wanting to overburden our requests. I mean, ultimately, if we had a project for full consolidation as we do now, it will have a large burden on our other projects, as this will, but it is still a high-priority project.

The idea was for the exchange to offset the cost overall and offset what we would have to request and how we were actually staging the project. But we are talking, in terms of where we are today, full consolidation in requirements, very much reflective of where FBI and where this project is today.

Mr. CRENSHAW. Well, and the last question. Just, that was your idea. It was a great idea. But it doesn't sound like it was based on reality, unless we can find out more about where these appraisals are and all those kind of things. So I think we are concerned about that.

Mr. Serrano.

Mr. SERRANO. Thank you, Mr. Chairman.

You know, Administrator, some pundits would say that it is very easy to confuse Members of Congress. Well, this may be an example of one where we are innocent of being easily confused. It is just very confusing, and we are trying to get to the bottom of it.

Based on your budget request, it seems that, in addition to the \$1.5 billion in appropriations, GSA will still need to give the Hoover Building to the developer.

In last year's hearing, you would not tell the committee how much the Hoover Building was appraised for, but there is no way for us to analyze your appropriation needs without knowing what you and the developer are assuming the Hoover Building is worth.

Can we get the current appraised amount today?

Ms. ROTH. The current appraised amount is actually from an old appraisal. As a part of this process, we will do an appraisal of the project.

But in terms of both the estimates and costs that are—the estimates that are going into the project, it is a much better situation for the government to be in to wait for responses from the developers before we are talking about any of the numbers—and getting through awards.

I mean, ultimately, we have three developers that are competing. They are running estimates on the various sites as well as the overall project as well as the value they will give us on Hoover, and to talk about those numbers in an open setting really will undermine our efforts.

Mr. SERRANO. Okay.

Except for the military, an open setting is a public hearing, and we usually like to get the information. But I am not going to press you on that.

Could you at least give an idea of the appraisal value to our staffs at the minimum? I mean, they are sworn to secrecy.

Ms. ROTH. We will definitely follow up with the staff. And, again, it really is just the integrity of the procurement process that I am focused on. We are right in the middle of the procurement and really just want to make sure that we get the best deal out of it that we can.

Mr. SERRANO. I understand that. But, you know, the chairman has to respond to people or to Members who, for their own reasons and for their beliefs, don't believe in spending certain amounts of money. I, on the other hand, want to be helpful in investing in the future, as they are too.

So you don't help us by telling us, "I can't tell you that in public." And I am trying to be helpful here by saying, could you at least tell us in private so we have an idea what we are dealing with? Because that is what we do as appropriators; we appropriate. But we are not going to appropriate in the dark. No party is going to do that. And it doesn't matter who the administration is, we are just not going to appropriate in the dark.

We need to ensure that we are getting the best price for the government for the Hoover Building, Administrator. Is there a chance that the building is being undervalued as part of this exchange and would bring in a higher price if sold on its own?

Ms. ROTH. I think what is unique about this exchange and this process overall and part of what has brought the interest to the table is the fact that Hoover itself is on Pennsylvania Avenue, and, you know, it is America's Main Street. And, ultimately, to be able to have access to that property, I think, is part of what makes the package overall attractive. So taking the exchange out would have an effect, I think, on the project overall.

Mr. SERRANO. Well, there is one part I totally don't understand, and it might be that I didn't pay attention to what the chairman was asking. Why is the developer getting the building?

You know, I come from a city where developers are always getting—people think the developers are getting more than they should. Why is the developer getting the building? Refresh us

again. What is the developer giving us in return for getting the building?

Ms. ROTH. Well, as a part of utilizing the exchange tool, we are actually giving the building itself, the Hoover Building, in exchange for a new building that will serve as the headquarters for the FBI.

Mr. SERRANO. Okay. All right.

And are the FBI and the Department of Homeland Security headquarters being treated the same? Specifically, I want to know what the GSA request is going to be used for versus the agency's request.

My understanding is that GSA provided a warm shell and DHS appropriation was used for the interior. Is that the same with the FBI's headquarters?

Ms. ROTH. It is the same, the requests that are before you, and the FBI's request is for construction.

[The information follows:]

The FBI and GSA requests for Fiscal Year 2017 appropriations will be used toward the construction of the new FBI headquarters.

In comparison to the GSA and DHS requests for Fiscal Year 2017, the GSA request will fund construction, while the DHS request will fund tenant build out.

Mr. SERRANO. Okay.

I am sure Mr. Yoder has some questions.

I did learn something, Mr. Chairman. I thought America's Main Street was River Avenue where Yankee Stadium is located. But I guess not.

Mr. QUIGLEY. Michigan Avenue in Chicago.

Mr. SERRANO. Michigan in Chicago? I should have stopped when I was ahead.

Mr. CRENSHAW. Okay. I will turn to Mr. Yoder now.

Mr. YODER. Thank you, Mr. Chairman.

Well, I actually do represent the Heartland, which is really the Main Street of the whole country. So you are welcome to come anytime.

Administrator, welcome to the committee. Appreciate your testimony today.

I wanted to ask you about your understanding of the GSA's role at the Bannister Federal Complex in Kansas City, which is a former facility that is closed. And I want to know a little bit about where it is going, but I first want to talk about where it has been.

If you are aware, the Bannister Federal Complex in Kansas City made a variety of things. They made airplane engines during World War II, but later they shifted and began making components for nuclear weapons. And after, you know, many folks dedicated their career there, they became aware that they were exposed to significant amounts of radioactive material.

There has been some \$55 million actually paid out to these workers at a former GSA facility, but the vast majority are frustrated and they haven't been paid. And some live in my district; some live in Emmanuel Cleaver's district, where the facility is located in Kansas City, Missouri.

And the types of claims that have been uncompensated are pretty significant. You have hundreds of people with skin cancer, beryllium sensitivity, lung cancer, prostate cancer, chronic beryllium

disease, chronic obstructive airway, female breast cancer, asthma, kidney cancer, bladder cancer. And the list goes on and on and on.

And so I know this is a real tragedy that has occurred here. And these constituents are coming to me asking why their claims haven't been paid and only a fraction have been paid.

And so I guess I would first like to know, can you provide me any information about what the GSA's role was in that situation in terms of informing them of what they might be exposed to? And what are the general policies on that today for workers that may be being exposed to materials that could affect their health?

Ms. ROTH. Yes, Congressman. Thank you for the question. This has obviously been an ongoing item for the agency and one that we will continue to address as concerns are raised.

My understanding—and I have spent just a little bit of time with this item—is that we did have situations in which there were individuals who were concerned about illnesses related to the environmental health of the location. At this point, GSA has not found that there was a connection between the environmental health of the footprint that is GSA's. Obviously, there was another activity on this site overall. But we continue to be open and listening to any requests that are brought forward.

But, at this stage, we don't have any that we have identified where there was an illness and, as a relation of the illness, that it was connected to the environmental health of the footprint managed by GSA.

Mr. YODER. So you are saying that the facilities weren't managed by the GSA.

Ms. ROTH. In the footprint—no, the footprint that is the part of GSA's footprint. There is another agency—

Mr. YODER. So what was the portion that the GSA was responsible for?

Ms. ROTH. I don't know the property well enough, as I sit here, to talk about specifics of the separation of the site itself. But there is a portion of the envelope that is GSA and a portion that is managed by another agency.

Mr. YODER. And, to your knowledge, there is no overlap in terms of individuals that would be exposed to this radioactive material that would be GSA employees or GSA controlled space?

Ms. ROTH. Not to my knowledge, as I sit here. But we will definitely work with your staff and work very closely with any concerns that have been raised to your attention as well. I would like to deal with those—

Mr. YODER. Yeah, I mean, I just have hundreds of constituents in my district that feel like their claims aren't being heard, many of them suffering from devastating cancers. Five hundred fifty-four people are deceased, and some of their claims have been denied. The approval rate for cases involving former workers at the plant is particularly low at just 23 percent, less than half the national average.

So it is a problem that, you know—my heart breaks for these folks, and I want to make sure the government is doing them justice and doing them right. So I would just like your help, to the extent that GSA can be involved in that, to advocate for these workers to ensure that they are being properly compensated.

And I guess my followup is—two followups. One, what are the measures the GSA is going to take going forward to ensure that these types of things don't occur in the future for properties that GSA manages? You know, what are safety measures that you yourself believe are in place?

And then there is a timeline for cleanup of the facility for disposal—for the site for disposal and cleanup. Can you clarify your agency's involvement in that process?

Ms. ROTH. Sure.

And, just to be clear, there were items that needed to be investigated by GSA, and we have done so, and we will continue to investigate any items that are brought to our attention. There are a number of things happening at that site. Because of the size of the footprint, we actually are expanding some presence there on certain parts of the site. And it would probably be worthwhile for us to come back to the committee staff and talk through the aspects of the site.

But, overall, we take the environmental concerns of our properties very seriously. Obviously, we have a number of properties that we manage, and, really, the environmental health for the employees that work there and the safety of those employees is something that is of high concern to us.

So we will continue to—and we deal with each of our sites, watch and monitor closely, try to ensure that we have an understanding of any vulnerabilities that are there, and follow up as appropriately. But we will definitely ensure that whatever steps are necessary here to respond to your constituents specifically and the project overall, that we continue to do that.

Mr. YODER. I appreciate that.

And, Mr. Chairman, I will yield back, but I will just say that, you know, examples like these, I think, have to remind us that we have to be vigilant in making sure that Federal workers who work at GSA facilities or other facilities that are exposed to harmful materials, that we do everything we can to make that doesn't happen and make sure that they are aware of it, protect them, and then when things do go wrong and we do have health outcomes that we do everything to compensate them and make it right.

I yield back, Mr. Chairman.

Mr. CRENSHAW. Thank you.

Mr. Quigley.

Mr. QUIGLEY. Thank you, Mr. Chairman. And I strongly agree with Mr. Yoder's remarks.

Ms. Roth, I understand your concern about sharing the appraisal numbers with the 17 people watching on C-SPAN right now. Let's talk about something perhaps that we do want the public to know about, the Federal Real Property Profile.

I saw that GAO had found issues with the database and questions of reliability. Now, I understand—huge database and conflicting information coming from different sources. But it also raised questions about the property reductions and the associated cost savings being overstated as a result of those inaccuracies.

Can you talk about that, just how serious that problem is and what you are trying to do to overcome?

Ms. ROTH. Sure.

And just to separate the two, in particular, the real property database, as you point out, Congressman, does have a lot of sources that it pulls from. And there are steps that we have taken to work with our Federal partners in terms of improving the integrity and quality of that data, to the extent of ensuring that very senior-level individuals in those agencies are seeing the data as it is being submitted, as well as doing some mandatory drop-downs, as well as smart assessments of information that is entered into the database from year to year. This is something we are rolling out this year. If square footage, for example, in a property is drastically different from one year to the next, the database would actually flag the agency to deal with those discrepancies.

When it comes to disposal itself, however, we have more accuracy around the actual activity that is occurring. So when we are actually going through a disposal process with an agency, we are spending more time hands-on with that property itself and so can confirm the disposal activity and what we are actually disposing and the savings therein.

Mr. QUIGLEY. But the data available in the Federal Real Property Profile is not available to the public, not available online. I guess there are summary reports, which are kind of Excel spreadsheets.

You know, several of us have been trying to address these issues of excess property. It is hard to know what we have. I am not sure anybody in the government can put a summation on all this and what their value is. I think we need to get that in order and begin to talk about how to make it more available to the public.

Ms. ROTH. Yes, sir, and wholeheartedly agree. We have been working with at least the properties that are under GSA's management to enhance how we are making those data sets available, even to the extent that we have now a Web site that shows a map where you can sort of "hover" over the locations and get a pretty good snapshot of data as well as click into it and get more information.

We want to be a resource for Federal agencies as they work to make data more available and have formats and platforms that they can pull from pretty quickly. But we will continue to work with OMB and the other agencies on that effort.

Mr. QUIGLEY. Let me ask you to touch on one more thing quickly. GSA has some responsibility or helps, to a degree, helping Federal workers gain access to childcare facilities. Especially here in D.C., we are hearing the availability, especially on the Hill, is long waiting lists for such things and exorbitant costs of this sort of thing, to the point where we actually hear people making career decisions and family decisions based on the fact that there is no affordable child care.

Your thoughts on this?

Ms. ROTH. Well, I will be happy to follow up with your office regarding what role we play and if there is anything we can do to support, even to the extent of information. As the mother of a young child myself, the idea of not having child care that is affordable or easily accessible is, I can understand, very problematic. So we will do everything we can to support that effort.

Mr. QUIGLEY. In the meantime, have you heard at all from staff workers, other people in GSA, just about what the lists are, the costs and so forth here, especially on the Hill, from my own staff, for example?

Ms. ROTH. I can't say that I have directly, but I will definitely follow up.

[The Department responded for the record:]

GSA staff have reached out to Congressman Quigley's staff to provide this information.

Mr. QUIGLEY. I appreciate that.

Thank you, Mr. Chairman. I yield back.

Mr. CRENSHAW. Thank you.

I want to ask you about the \$3.1 billion fund for the IT, but let me just finish up with the FBI. Just so you will understand, we are pretty much, as Mr. Serrano said, in the dark. If you come in and say, we got a building that is worth X dollars and we are going to build a new building that is worth X dollars, that sounds like a fair trade. But I don't know—somehow, we have to know where you got the numbers and where you get the number to say we missed it by \$1.8 billion.

Because if you say it costs \$2 billion to build a new building but we got a building that is worth \$2 billion, then that works, right?

Ms. ROTH. Yes.

Mr. CRENSHAW. But if somehow there is an almost \$2 billion discrepancy, that means either, A, that the building you had wasn't worth what you thought it was or, B, the building you are going to build—you can't build what you thought you could build. And we have to know that, but, in particular, when you walk in and say, we need another \$1.8 billion to finish our project but we don't have any other number.

So somehow we have to work through that, that we don't want you to tell all the three developers what the numbers are, but everybody has got an idea of how much it costs to build a building and everybody has an idea of how much a building is worth. So, as soon as we can get that, it will make it a whole lot easier for us.

Ms. ROTH. And I appreciate it, Mr. Chairman. And we want to work very closely and will continue to work very closely with the committee. Obviously, we are asking for your support and want you to feel confident about this effort. So we will definitely look forward to continuing to follow up with you and have discussions.

Obviously, this is a difficult project with a different scope at this stage, in terms of a full consolidation and understanding the requirements, and that is really having an impact. But, absolutely, sir, I understand the position the committee is in.

Mr. CRENSHAW. Well, thank you.

Now, the \$3.1 billion, you propose \$3 billion in mandatory and \$100 million in discretionary. Where did that idea come from? Do the agencies request IT upgrades every year? Three billion dollars is a lot of money all of a sudden. How does that work? And why is that mandatory versus discretionary?

Ms. ROTH. Well, let me say, this effort overall, the IT Modernization Fund, really grew out of the Cybersecurity National Action Plan that the President presented. You are aware last year we had

the Cyber Sprint, and out of that discussion and out of that evaluation it was clear that part of the major vulnerability or major need for Federal agencies was in the area of legacy IT and supporting the replacement of legacy IT.

And so, as such, the idea of this Modernization Fund specifically is to support that effort. As agencies look to replace legacy systems, the highest cost is really that initial upfront cost. The idea is for this fund to be a revolving, self-sustaining fund that agencies can apply to to pay back over a 5-year period the costs of the investment overall.

But it also has the benefit of helping us see across government. Sometimes agencies are trying to deal with a legacy issue in a silo in terms of its agency, itself, when, actually, the solution actually may be something that either multiple agencies can utilize or multiple agencies have already solved.

So we are seeing it from both perspectives, both the business enterprise perspective of how do we rationalize and have smart investments around our IT that can support everyone, as well as helping to succeed and support what agencies are faced with on a regular basis. And the requests will reflect that. And as you pointed out earlier, the legislation resolving this request should be to you and your other members in the next couple weeks, the next few weeks.

Mr. CRENSHAW. There will be some authorizing language, I assume. Are you going to have to hire some more staff to administer this fund?

Ms. ROTH. Yes. There would be additional staff. It would have a program office. And the staff and the focus of the office would be really to evaluate the investments themselves to give—

Mr. CRENSHAW. Is that all included in the \$3.1 billion?

Ms. ROTH. Yes.

Mr. CRENSHAW. You know, the OMB oversees all the computers of everybody in the Federal Government. I can't remember what the number—it is billions of dollars we spend on computers all across the Federal Government. And we had Mr. Donovan say that if they coordinated all the, I guess, buying of computer equipment, they might be able to save as much as 50 percent.

So is that something you have talked to OMB about, about how all this would work?

Ms. ROTH. Absolutely. This is actually an effort we have been working very closely with OMB. This is an outgrowth of the Federal CIO—obviously, a part of the senior team at OMB. So this is very much in conjunction with them.

GSA's role is really, obviously, as an administrative arm. It makes sense for this to be coordinated through GSA. But we have worked very closely with other agencies on their IT needs and—

Mr. CRENSHAW. How do you decide we want \$100 million from discretionary but we want \$3 billion out of mandatory?

Ms. ROTH. It really goes hand-in-hand. And—

Mr. CRENSHAW. How do you decide we want this \$3 billion that you are not really appropriating, so you can say, well, we only asked for \$100 million. How did you decide to put that as a part of mandatory spending?

Ms. ROTH. It was the preference of—and we worked closely with OMB, in terms of how that request came through. Ultimately, since it is a one-time request, I believe the thought is that we can define it as a one-time request and have it come forward and then have it as a revolving fund.

Mr. CRENSHAW. Well, it just seems like it would be one way you could use mandatory funding to circumvent the regular appropriations process. Because you would have to be a little, more strict about where you are going to spend the \$100 million than the \$3 billion that came from mandatory.

Mr. Serrano.

Mr. SERRANO. Thank you, Mr. Chairman.

You know, it is amazing, Mr. Chairman, how we always end up talking about computers and IT, you know. And I don't know if I was being sarcastic or profound when I suggested during the roll-out of ObamaCare that all they had to do was go to a college dorm and get a couple of kids who would have taken care of the problem in about 30 seconds, you know, instead of doing everything else that happened.

You know, one of my issues on this committee for years has been purchasing versus leasing. I think our government spends too much money leasing and, at the end of the day, owns nothing. Maybe there are people much smarter than me—and I am not being sarcastic—who could argue that leasing is much better.

But has that changed at all? Because this committee made an effort to get people to say stop leasing for so much money and purchase some of the places that we need in our government. Pretty soon, the government will be leasing and leasing and leasing and no purchases at all. Has that changed at all?

Ms. ROTH. Yes, sir. I will say that the committee's support of consolidation funds has been a tremendous effort for our portfolio overall. We have been able to see savings year over year since the support of that effort, as well as a reduction of our footprint in particular.

We have very much a value on the owned property. We believe the owned property is the best use of the American taxpayer dollars and want to maximize our presence in the properties that are owned by the Federal Government.

So the funding that the committee has given us, I think, over the past 3 years—in particular, we had—I had it written down, actually—1.4 million square feet of reduction in square footage, over \$100 million in savings on lease avoidance. And that is having a definite impact on the bottom line.

Mr. SERRANO. Okay.

Let's move on to another area that is also of great interest to me, and it is our territories. It seems that the territories always get left behind. And I take personal interest because I was born in one of them, and I represent the Bronx, which has a lot of folks that were born in the territories.

Does GSA make a special effort through staffing patterns and programmatic patterns to make sure that the territories are being treated as fairly as the Constitution allows, which is totally fair?

Because, in many cases, you will hear where they are waiting for a building for, you know, three or four times the amount of time

that one of the States has to wait. And you wonder, you know, they are Federal buildings, they are being used to render services to American citizens, so why not the same time or something close to it?

Ms. ROTH. Yes, Congressman. And I know that you have had discussions and we have had discussions over the recent past regarding projects, in particular, in Puerto Rico. And we have needed to ensure—and we are in a much better place now—that we have boots on the ground as well as hands-on efforts with any of the projects in the territories. And I think that what we have seen in the turnaround of the projects in particular that we have discussed, that we can do that.

And so it has a matter of ensuring that we are staying connected to any projects that we have in the territories and that we are keeping the same discipline across our portfolio in terms of expectation of turnaround as well as project management and schedule.

Mr. SERRANO. Well, I would appreciate that. And you would be not surprised but you would be happy to know that this committee does not disagree, that we want people treated equally, and that sometimes, because they are not a State, they don't get treated equally.

Let me ask you a question here. In the omnibus bill, GSA is requesting 17 percent less for construction and acquisition than was provided in the fiscal year—I am sorry, I have it wrong. You are asking for 17 percent less than was provided in the omnibus for 2016. That may be understandable, given that you received over a billion increase in construction in fiscal year 2016.

There have been concerns from some about your ability to handle such large increases in 1 year. How are you managing that many projects in the fiscal year 2016 bill? And did they impact what you requested in 2017?

I believe we must invest in infrastructure across the country and the territories, but I also don't want to set you up for failure by not giving you the staff to manage all of your projects.

Ms. ROTH. Sure. And I thank you for that observation.

I would say that—well, first, let me start by saying that we very much appreciate the committee's support in the fiscal year 2016 budget. That has been a tremendous opportunity, especially in the area of courts that was mentioned earlier, for us to meet some of our partner needs. And we are gearing up, we are working very closely with the courts, in terms of evaluating their projects, the timing of those projects, and ensuring that we are able to move forward and execute on time and under budget.

Across the board, we have a volume of needs that really exceed our resources. And so what we try to ensure is that we are able to articulate to the committee where the needs are and what is driving our programming going forward, and to ensure that we have the staffing lined up to manage what we can see coming forward.

So your support has been tremendously important. And we are doing everything, from our perspective, to line up and ensure that we have staffing and support in the places where that funding is focused.

Mr. SERRANO. Thank you.

I know we have touched on it, but how is your IT modernization program going?

Ms. ROTH. The IT modernization for GSA, overall, it has been a tremendous opportunity for us as an agency in terms of really rationalizing how we are managing IT. Now, in terms of having had a consolidation that we did internally as well as establishing what we refer to as an investment review board to look at large-level IT investments, really is allowing for us to support other agencies who are moving in the same direction, especially the outgrowth of FITARA, which was an important effort this committee was involved with.

So we are seeing the dividends from that consolidation activity as well as being able to support other agencies as well.

Mr. SERRANO. Thank you.

And I apologize, Mr. Chairman. I was looking at my clock, and I thought it was going down; it was actually going up. I know, it sounds like a Federal budget, but I don't want to hear that comment.

Mr. CRENSHAW. No comment.

Mr. Yoder is recognized.

Mr. YODER. Thank you, Mr. Chairman.

And I am going to not take that lay-up that my colleague Mr. Serrano just gave me there, and I am going to go back to the Administrator.

I note in your biography that you have a history of being sort of tech-savvy, and I think you were in the top 50 women at tech at one point. And I actually noticed the interview you did at one time where you said you had an early Commodore 64 and you actually used to code your own video games.

Ms. ROTH. Yes.

Mr. YODER. That is pretty neat. So you have definitely a tech background. Obviously, you have a love of tech.

And so I wanted to talk to you about the Real Property Profile. And I wanted to associate myself with the comments from colleague Mr. Quigley. He and I have long been bipartisan in our efforts to try to resolve the concerns we have, and that continues to be that we have struggled to find ways to quantify the property that the Federal Government owns, both within the GSA and all of the property—which is a secondary issue, that not all the property is with the GSA, so you have two separate problems there—and that we really don't have the ability to tell our public, you know, what we own, what is vacant, what isn't vacant, what is idle, what is owned in their community in a way that is usable.

And so I was just sort of looking at the RealPropertyProfile.gov. Is—

Ms. ROTH. Yes.

Mr. YODER [continuing]. That the site?

So I was pulling that up on my phone here, and immediately I note that it is password-protected, username and password, and there are really no instructions on here on how someone would go about getting a password or a username.

And, you know, when I go through something like this—and, first of all, as Mr. Quigley brought up, there are billions of dollars of property, tens of thousands of pieces of property that the GAO

has said before are idle, but we would really have no way to verify that.

My checkbox would be, is there public access? Is there a mobile app that would allow people, you know, constituents to drive around once they have it and look at things? I don't know because it is not accessible. Is it user-friendly? Is it comprehensive? Is it fully implemented in a way that people are using it today make decisions that are informed that will allow taxpayers to save money?

And so, I guess, first of all, are there other standards I should be looking at? But, in terms of those standards, have we met those standards? And when will we, if not?

Ms. ROTH. We have been working diligently to ensure we are meeting those standards with the data that we are putting forward for GSA, in particular, because of the dynamic nature that you refer to, in terms of making it easily accessible, being able to pull it up on your mobile device. If that is not working, I will definitely have—

Mr. YODER. Well, the site—you can pull it up, but it is username-and-password-protected, and there is no description on here, it doesn't tell you—I guess you would email Chris Coneeney or Stephanie Klodzen and ask them how to do it. But it doesn't say—it just says if you forgot your password or you are a GSA employee. But it doesn't say to members of the public, on this at least, how you do it. And I completely could be missing something you might pull up on a desktop.

Ms. ROTH. And that is not as productive as we want to be, right? We want people to be able to access our data in the way that they are used to with all other data in the private sector.

Mr. YODER. Why is it even login/password-protected? I mean, the whole point is to make this accessible to the public, right?

Ms. ROTH. Yes, absolutely. And so—

Mr. YODER. When does that happen?

Ms. ROTH [continuing]. The idea that it is password-protected is surprising me, as I sit here.

Mr. YODER. Okay.

Ms. ROTH. And I could be thinking about two different places where the data resides, which would be a challenge as well. So I will ensure that we—

Mr. YODER. Yeah, this is *RealPropertyProfile.gov*.

Ms. ROTH. And we have a—we have, in particular in what I am used to seeing, is a place where you can see both, especially for GSA's data, the data itself as well as, like I said, a map that is interactive. The database that is a representation of all of government, I don't know if that is password-protected, but we want to make it as accessible as possible.

Mr. YODER. Well, I have brought this up, I think, now 3 years going. I brought it up to, I think, yourself last year, your predecessors. Every year, we are bringing this up on the record, and we are still not getting there.

One thing I think that would help is if we engaged the private sector. You know, if this was a Google project, you know, I think this would be—or any company out there that was trying to do a mapping product, I bet it would move more swiftly.

And so, I guess, what has GSA done to bring out the best mapping and geospatial knowledge base and expertise from the private sector to help with this?

Ms. ROTH. And we actually have been able to achieve geospatial mapping with our GSA data in particular. It is really the data that is the rest of the Federal Government which is included in the real property database that is currently not available in the same format.

Mr. YODER. I know, but, just in general, has the GSA sought advice and worked with the private sector to build the best mapping system? Or is it doing this internally and not using private—

Ms. ROTH. We have consulted with the private sector. I am not sure to what extent the break happens. And we did meet with, I think, even some members, at your recommendation from our last hearing. There was a sit-down with a team there, as well. So we have engaged the private sector from an expertise perspective where needed and are also managing internally as well.

Mr. YODER. Well, it seems like we have a long way to go. And I just know, given your tech background, that if you were on the outside of this looking in, you would say: Not acceptable. You know, the private sector would have created an app for this years ago, and we would be able to look at every piece of property, we would be able to compare it. Policymakers would be able to utilize it; the public would. And the public could assist us by finding pieces of property that were unutilized and maybe try to repurpose them, saving us money.

And I think, whether you are a liberal or a conservative, none of us, hopefully, like to see idle property that could either be put to use or sold. And so it is one of those rare bipartisan things that everyone sort of wants.

And I guess I am just asking you again to consult the private sector or do what you need to do but to build a really solid system and an app here that people could use that would be efficient and effective. And I know it is something that—you know what I am talking about, what that would look like. We are not here with this, particularly the fact that it is not even assessable to the public.

And so I just hope that, if we meet in this committee again, that we will have great news and that this will be something that, you know, the GSA can accomplish that we can tout, that, hey, government can get things done effectively and efficiently; we have a tech-savvy leader, and she is going to make it happen. So let's get it done.

Ms. ROTH. Yes, Congressman.

Mr. YODER. Thank you so much.

Mr. CRENSHAW. Thank you.

Let me ask you about the Federal courthouses. We appropriated, I think, \$940 million to build nine new courthouses around the country, and they are in different stages of development. Some are probably ready to go; some are in plan and design.

And so, when we ask questions about the Hoover Building and the cost of new construction, it raises concerns about what kind of handle does the agency have on building nine new courthouses.

How do we help you make sure that those moneys at nine different courthouses, nine different sites, different stages of development, how can we be assured that there won't be any cost overruns or that those numbers that you requested, that those are pretty real numbers in terms of getting those projects done on time within the budget?

Ms. ROTH. What has been very important and will continue to be important there is working very closely with the courts and especially, courthouse by courthouse, the requirements related to each of those projects.

There have been, as you point out, Chairman, some projects that have plans that were currently pending, ensuring that we are bringing those forward to see how current they are, ensuring that we are focused on the requirements, and ensuring that the requirements are really what is needed to meet the mission.

But I think working closely with the courts to ensure those dollars go as far as they can is really a priority for us. And so your support, both around funding that as well as keeping each of the projects in alignment, making sure that we get the most out of each project, is very beneficial.

Mr. CRENSHAW. Is there a prospectus on each of the courthouses?

Ms. ROTH. There will be a spend plan coming forward in the next few weeks. I think mid-April is the timing. And that will be the outline of each of the projects, what they entail, all of those pieces.

Mr. CRENSHAW. Where did you get the \$948 million to start with?

Ms. ROTH. It was based on the original estimates for the projects.

Mr. CRENSHAW. Okay. So we will see these new prospectuses on each one of them, and hopefully they will match up with what the original estimates were.

Ms. ROTH. Yes, sir.

Mr. CRENSHAW. And then you will work with the Judiciary and the U.S. Marshals to make sure they have the right space, the right security, and all that stuff?

Ms. ROTH. That is right.

Mr. CRENSHAW. Let me ask as one last question about the \$35 million that we provided in design money—I guess it was called a Federal civilian cybersecurity campus. I know that has been talked about, and, finally, we put \$35 million last year. This year, there is not a request for that campus. I don't see it anywhere in the 5-year plan.

What happened to that \$35 million? Where did it get spent or will it be spent? And where does all that fit in long-range?

Ms. ROTH. The cyber project is one that we continue to work with the partner agencies to understand requirements. Again, I feel like I have said "requirements" a few times today, and I apologize, but they are a key part of us defining the scope of our projects and what will be programmed as a part of the projects. And that really has a strong impact on what is needed and necessary, as well as the timing of it.

So we continue to work with those partner agencies. And once we get a better sense of what the requirements are and the programming for that activity, then we would be able to come back with

a request. Those funds that you have awarded at this point would be held for that project.

Mr. CRENSHAW. So are they being used now? What are you doing with that \$35 million?

Ms. ROTH. Currently, what we are doing with the project overall is working with the agencies to scope out the——

Mr. CRENSHAW. Well, the project—but it is not in the 5-year plan. I mean, there was going to be a campus, but—so you got \$35 million last year. You didn't ask for any more money this year. And I thought that was the planning and design money.

But then, if you don't need more money this year and you don't have it in your 5-year plan and we are spending a lot of money on the Department of Homeland Security and the FBI building, where does this new cybersecurity campus fit in?

Ms. ROTH. And we will have a better sense, going forward, where it will fit in. The——

Mr. CRENSHAW. But what are you going to do with the \$35 million?

Ms. ROTH. We would use it for planning of this project, but, first—once we receive the requirements.

Mr. CRENSHAW. Where do you get the requirements?

Ms. ROTH. From the agencies, from the partner agencies that would be present on the cyber campus.

Mr. CRENSHAW. Okay. So who is that?

Ms. ROTH. It is a number of agencies. I would hesitate to name—I know that I can't name them all, as I am sitting here, but we can definitely follow up with the staff. But it was a number of agencies that would have a presence.

And part of it is really the question of what would need to be there. And in light, in some respects, of the projects you did reference, sir, those would obviously have an offsetting effect, potentially, for the requirements and programming of the cyber campus. But those are the pieces we are trying to figure out.

Mr. CRENSHAW. So in the planning and design, you are really not there yet? That \$35 million for planning and design, you are not spending that yet because you haven't figured out exactly——

Ms. ROTH. We are not able to spend those dollars yet until we nail down the requirements.

Mr. CRENSHAW. Okay. It probably would be better to have a project and then say, here is the project and here is how much we need to plan it and design it, as opposed to say, we need some money for planning and design on a project that we haven't finalized yet.

Ms. ROTH. And I believe that it has been some shifting efforts that has given us—I believe that the project was in a different place last year, which is what brought us forward with the request. But as we get a better sense of the requirements, then we would be in a position to go forward.

Mr. CRENSHAW. Mr. Serrano, do you have any more questions?

Mr. SERRANO. Just one more, Mr. Chairman.

After last year's massive breach at the Office of Personnel Management and Department of the Interior, there is rightfully more scrutiny regarding government's ability to keep information safe.

Efforts are still underway to strengthen those systems, including in GSA's own budget request to start a new IT fund.

I have some concern that in GSA's budget you want \$5 million for 20 FTE to establish a unified shared services management office that will promote consolidation of government systems and information. Shouldn't we ensure these systems have the highest level of security before we further consolidate government? Government efficiency is a goal, but so is security and information.

Ms. ROTH. Yes, sir. And I appreciate the observation. Security with our systems is very key. And the shared services office was stood up to support both existing shared services, offices that are providing shared services, as well as those who may be seeking to go to shared services. So this team, in particular, is really supporting, as we look to go to shared services, all the requirements of any system is being met, including security requirements.

And, obviously, as we have learned over the past year and we continue to enhance from our learning, the security parameters will and are changing on systems as well. And that would be integrated in terms of the information that this office would share with anyone seeking to go into shared services systems.

Mr. SERRANO. Now, that refers to your office, to GSA being able to be involved with other agencies—

Ms. ROTH. Yes.

Mr. SERRANO [continuing]. In this sharing. Do you think, as it stands now, you might have to hold back and wait for a while before we go further, or do you think you are ready to go with consolidating?

Ms. ROTH. Just to be clear, GSA would not actually be the ones consolidating any—

Mr. SERRANO. Okay.

Ms. ROTH. [continuing]. Of these systems or the services. Our team would help with the analysis and evaluations and recommendations of which shared service provider to meet the need of any particular agency.

So we are looking—and GSA has provided shared services in the past, as you know, such as our financial management services, which we have divested from, as well as our HR services. But this office, in particular, is looking at shared services across Federal Government and making either recommendations for agencies who are looking to go to a shared service or, if there are shared service providers who are looking to upgrade or divest from their efforts, supporting those efforts.

What we have found is that our shared services has been a place for savings for agencies, but having the support come from a central place would be beneficial for everyone.

Mr. SERRANO. Well, I have no further questions, Mr. Chairman.

I just want to thank you for your service to our country and for the difficult issues you deal with on a daily basis.

Ms. ROTH. Thank you, Congressman, for your support and—

Mr. SERRANO. I am not thanking you for having problems every day; I am thanking you for dealing with them.

Ms. ROTH. Yes. Thank you.

Mr. SERRANO. Thank you, Mr. Chairman.

Mr. CRENSHAW. Do you have any closing comments?

Mr. YODER. I rest my case.

Mr. CRENSHAW. He rests his case.

Well, let me close by thanking you, as well. And, in particular, thank you, Administrator, and your staff for personally getting involved in a project down in Jacksonville, Florida, which was a Coast Guard–Customs and Border Patrol project. It had been going on since 2007. There were lots and lots of problems, but I am told that within the next couple of weeks the building is going to open, the Coast Guard will move in, the Border Patrol folks will move in.

I got involved in 2013, so I am just as excited as you are to see this project come to fruition. So you are certainly welcome to come down to sunny Florida and view the new project. I plan on looking at it myself the first chance I get.

But, again, thank you for your commitment to making that happen. And, again, thank you for being here today.

And this hearing is adjourned.

**Financial Services and General Government Subcommittee
Hearing on the General Services Administration
for Administrator Denise Turner Roth**

Questions for the Record Submitted by Chairman Ander Crenshaw

FBI Headquarters Consolidation

When GSA started to pursue the Hoover building exchange, a complicated property exchange of unprecedented size, GSA was confident that the value of the Hoover building would more than pay for a new FBI headquarters. Last year, however, it started to become evident to Congress that GSA's arithmetic wasn't working. The 2016 Omnibus provided \$390 million towards the construction costs of a new FBI headquarters.

The 2017 President's budget asks for \$759 million for GSA and \$646 million for FBI. The sum of the FY16 and FY17 funds (\$1.8 billion) represents the inaccuracy of GSA's original estimates. GSA either overestimated the value of the Hoover building or underestimated the cost of the new FBI headquarters by \$1.8 billion.

Question: How confident is GSA of its current valuation of the Hoover building?

Answer: In 2010, GSA appraised the value of the Hoover Building at \$610,000,000. GSA is now conducting an updated appraisal of the building.

Question: What is the current value of Hoover? Please provide a range.

Answer: GSA is conducting an updated appraisal of the building. A current appraisal is not available.

Question: Explain how the cost of the requirements for the full consolidation of the FBI have increased by as much as \$1.8 billion? What new factors resulted in the project cost increasing by \$1.8 billion over the past year?

Answer: The cost of the project has not increased by \$1.8 billion. While it was GSA's hope that a one-for-one exchange was possible, it quickly became apparent that a project of the size and scope of a new, modern consolidated FBI HQ could not be accommodated through an exchange alone. Since the start of this process, including GSA's October 17, 2011 "Report of Building Project Survey," which was prepared in accordance with a resolution adopted by the Senate Committee on Environment and Public Works and subsequently submitted to that committee, and which investigated the feasibility and need to construct or acquire a replacement consolidated headquarters facility to house FBI in the Washington, DC metropolitan region, the

functional nature of the facility has fundamentally changed, and FBI's specific operational and security requirements further defined. As a result, the costs associated with meeting FBI's needs for a new headquarters facility have been updated. The current procurement is aimed at providing FBI with a state of the art facility to meet the Bureau's current and future needs.

Question: Explain how the valuation of the Hoover building decreased as much as \$1.8 billion. What factors would account for this loss in value?

Answer: The Hoover building has not lost value. GSA did not place a value on Hoover in excess of \$1.8 billion. As previously explained, the desire – and strategy was to pursue a one-for-one exchange in the hopes of getting the best value for the government and reduce the need for additional taxpayer investment. In addition, the expanding national security and intelligence posture of the FBI has resulted in specific facility and site requirements. These requirements have necessarily resulted in cost estimates for the new facility that differ from those originally developed. We expect that the value of the Hoover building will materially contribute toward the cost of constructing a new FBI headquarters as outlined in the current procurement.

Question: What is the current estimate of the total project cost? How can this Committee evaluate the request for FBI construction funding without knowing the full funding required for this project? How do we know if \$1.4 billion is too much or too little?

Answer: GSA and FBI have developed detailed cost estimates related to construction of a new FBI headquarters. Those estimates include, among other things, costs related to land acquisition, infrastructure, roadway improvements, environmental mitigation, as well as hard and soft costs related to the design and construction of the new facility. The funds requested in the Administration's FY 2017 budget for FBI – and GSA, together with funds previously appropriated and otherwise available, should allow GSA to award a contract providing for FBI's full consolidation into a new facility. Initial proposals from developers in response to GSA's Requests for Proposals are due on June 22, 2016. Those proposals, we hope, will validate the government's range of estimates. Until then, GSA and FBI will work with the Committee to provide as much information as is possible without compromising the integrity of the competitive procurement process currently underway. GSA and FBI will also continue to keep the Committee updated.

Question: Why was the funding split between GSA and FBI? Are they for different purposes? Typically, GSA provides for the shell and the agency customer funds the buildout of the interior.

Answer: Given the size and significance of the funding request, it was split to share the burden of the appropriations request between the two agencies to ensure both agencies and their

appropriations and oversight committees have an invested stake in the successful outcome of the project.

Question: If funding is not being used this way, is there a precedent for this? Will there be additional funding requirements in out years to buildout the interior?

Answer: If the President's FY17 budget request is fully funded in a timely manner, we expect to be able to award this project in the fall of 2016. Funding for FBI's specific and specialized furniture, fixtures and other equipment will be addressed by FBI in future fiscal years.

Question: Should agencies bear more responsibility for the cost of construction?

Answer: GSA and FBI are sharing the responsibility for the cost of construction.

Property Exchanges

The FBI Hoover building exchange is the largest and most complex exchange GSA has ever executed. As I stated earlier, I am very concerned by the size of the request for the new FBI headquarters and I am worried GSA may not have the expertise to execute such a complex exchange.

Question: How much has GSA spent on contractors to assist with exchanges? For each contract, please specify its value and scope, award and expiration date, the amount paid to date, and the amount billed for each exchange project, and identify the prime and subcontractor.

Answer: Please find attached spreadsheet that provides the requested information.

Question: How many swap constructs in total does GSA have on the table? What is GSA's capacity for carrying out this mechanism?

Answer: The attached "Takings and Exchanges" report for the First Quarter of FY2016 provides a list of exchange projects, with which GSA is involved. GSA determines whether to move forward with an exchange if it will provide value to the taxpayer, and can be executed with available resources.

Courthouse Funding

The Omnibus provided GSA with \$948 million for design and construction of nine Federal courthouses on the Judiciary's Courthouse Project Priorities Plan. The courthouses funded in the Omnibus are in various stages.

Question: How does GSA work with the Judiciary on each project's individual space and security requirements? Is the U.S. Marshal Service consulted as well?

Answer: GSA works very closely with the Administrative Office of the U.S. Courts on the specific space and security requirements for each courthouse construction project included on the Courts' 5-year priority plan. That plan identifies the Courts' most urgent security and space needs. The Courts provide GSA with specific space requirements, and GSA works closely with the Courts to validate the numbers and size of courtrooms and chambers associated with each project. GSA designs courthouse construction projects to meet these needs using the space and security specifications prescribed in the U.S. Judiciary's U.S. Courts Design Guide and the U.S. Marshals Service's "Requirements and Specifications for Special Purpose and Support Space."

Question: Will GSA be submitting prospectuses for each of the courthouses?

Answer: Yes, GSA will be submitting prospectuses for the courthouse construction projects. For the Nashville, Tennessee courthouse, the first project on the Federal Judiciary Courthouse Project Priorities list dated September 17, 2015, GSA already submitted a prospectus to the authorizing committees as part of the FY2016 budget submission.

Question: Specifically, how does GSA work with the Judiciary to ensure there are no cost overruns?

Answer: GSA provides program and project oversight throughout the life of any project. Our Design Excellence and Construction Excellence programs provide structured, industry peer input into project development and execution. These programs are supplemented by budget and scope review and reconciliation at regular intervals during the design process. Additionally, GSA's design contracts require design within budget and GSA provides cost management oversight to ensure that projects are developed to successfully address current market conditions. GSA manages risk throughout the project with emphasis early on in a project through an analysis of several factors - scope of work, market conditions, schedule drivers, and cost controls in selecting an appropriate delivery method for procuring the construction contractor. GSA determines delivery method in conjunction with the Administrative Office of the U.S. Courts.

Consolidation

The Committee has provided GSA with \$215 million in consolidation funding over the last three years.

Question: How much space has GSA been able to reduce from GSA's portfolio?

Answer: Beginning in FY 2014, PBS implemented its Consolidation Activities special emphasis program, aimed at helping agencies reduce their reliance on costly leased space to meet long-term housing requirements by developing strategies to use space more efficiently and maximize use of the existing federally owned inventory. Through its FY 2014 and FY 2015 Consolidation Activities projects, PBS is helping its partner agencies reduce space by more than 1 million square feet.

Question: How much money has been saved by agencies in rent because of this effort?

Answer: Through its FY 2014 and FY 2015 Consolidation Activities projects, PBS is helping its partner agencies reduce agency rent payments to GSA by \$36 million. In addition, these efforts are reducing GSA payments to private lessors, avoiding future lease payments totaling an estimated \$76 million annually.

Question: How does GSA plan to use fiscal year 2016 funding?

Answer: Please see the enclosed Consolidation Activities Expenditure Plan for FY2016.

Question: How does GSA plan to use the \$75 million requested for fiscal year 2017?

Answer: GSA proposes \$75,000,000 for the reconfiguration and renovation of space within Government-owned and leased buildings to support GSA's ongoing consolidation efforts to improve space utilization, optimize inventory, decrease reliance on leased space, and reduce the Government's environmental footprint. To date, GSA is evaluating over \$180 million worth of consolidation projects that could use the FY2017 requested appropriations.

St. Elizabeths

Last year, GSA rolled out an Enhanced Plan for the Consolidated Department of Homeland Security Headquarters at St. Elizabeths, which reduced the overall cost of the project and sped up the completion date of the project by 5 years to 2021. The Omnibus included \$341 million, as requested, to complete construction of a highway interchange and to rehabilitate a number of buildings on the campus for the DHS Secretary directorate.

Question: With full funding provided in fiscal year 2016, is the project still on time and on budget?

Answer: Yes, the project is on budget and on time, per the schedule and cost estimates in the Enhanced Plan.

The budget proposes \$267 million to construct the new headquarters for FEMA on the West Campus of St. Elizabeths, design funding for a new Federal building to house Immigration and Customs Enforcement, and continued rehabilitation of buildings on the campus. To date Congress has provided \$1.6 billion for St. Elizabeths.

Question: How much additional funding is necessary to complete this project?

Answer: To complete the project in FY2021, GSA will also require funding in FY2017 (\$267 million), PY+1 (\$345.5 million) and PY+2 (\$190 million).

Question: Does GSA continue to work with DHS on evaluating project requirements to identify any possible further savings beyond what was identified in the Enhanced plan?

Answer: Yes. GSA meets regularly with DHS to discuss the DHS Consolidation project, which includes assessing more efficient ways to meet DHS's programmatic needs. For example, additional opportunities for cost savings may include an even more concerted effort in applying flexible workplace designs and best practices for teleworking. Additional cost savings may also be derived from value engineering reviews throughout the design phase. However, in developing the Enhanced Plan for St. Elizabeths, DHS and GSA focused on identifying the maximum number of opportunities for cost savings, such that the enhanced plan reduced construction costs by \$800 million, while adding an additional 8,000 employees to the campus without increasing the seat number. While additional cost savings are possible, and GSA will continue to look for such opportunities, the Enhanced Plan reflects a comprehensive effort in identifying cost savings opportunities.

Cyber Campus

In fiscal year 2015, the Omnibus provided \$35 million in design money for a Federal civilian cyber security campus. No funds were requested for the cyber campus in fiscal year 2017 and no funding is listed for the campus on GSA's 5-year plan.

Question: Please explain why the Cyber campus no longer appears in the GSA budget.

Answer: The President's Fiscal Year 2016 Budget Request included more than \$227 million for acquisition of land and construction of Phase I of the Cyber Campus. Congress did not provide appropriations to meet this request. Given the absence of appropriations for Phase I in FY16, as well as the ongoing work on the program of requirements with the Department of Homeland Security and the Federal Bureau of Investigation, GSA's FY17 request addresses other critical national security needs.

Question: How is GSA using the initial \$35 million appropriated in fiscal year 2015? Have any of the funds been obligated? If yes, how much and for what purpose?

Answer: GSA has not yet obligated any of the FY2015 appropriated funds. On August 4, 2016, GSA submitted to the House and Senate Appropriations Committees a request to reprogram \$20 million from the Civilian Cyber Campus project to be used for remediation of the former Belle Mead Army Depot in New Jersey.

Question: How far along is GSA in the planning and design process?

Answer: GSA continues to work with the identified tenants of the proposed Cyber Campus, the U.S. Department of Homeland Security and the Federal Bureau of Investigation, to assist in developing a program of requirements for the project.

Question: With construction funding for new DHS and FBI headquarters, does it still make sense to pursue a separate civilian cyber campus?

Answer: The Administration is evaluating the need for a Federal Civilian Cyber Campus in light of other cyber priorities, including the establishment of the Cyber Threat Intelligence Center (CTIIC) and the Cybersecurity National Action Plan (CNAP).

Disposal of Government Vessels

The Federal Property and Administrative Service Act of 1949 states that the Maritime Administration (MARAD) serves as the government's disposal agent for obsolete government vessels over 1500 gross tons. However, GSA has recently disposed of obsolete government vessels.

Question: How many vessels over 1500 gross tons has GSA disposed of and when?

Answer: GSA Personal Property Management has disposed of 4 vessels over 1500 gross ton (GT):

· Ocean Survey Vessel BOLD	Sold: May 20, 2015
· DELAWARE II (155' Research Vessel)	Sold: May 31, 2013
· R/V MILLER FREEMAN	Sold: January 17, 2014
· R/V NOAA KA'IMIMOANA	Sold: October 29, 2014

Question: Does GSA consult with MARAD before disposing of vessels?

Answer: GSA follows 40 USC 548 in the disposal of surplus vessels.

40 USC §548. Surplus vessels

The Maritime Administration shall dispose of surplus vessels of 1,500 gross tons or more which the Administration determines to be merchant vessels or capable of conversion to merchant use. The vessels shall be disposed of in accordance with part F of subtitle V of title 46 and other laws authorizing the sale of such vessels.

GSA consulted with MARAD regarding the Ocean Survey Vessel BOLD and MARAD confirmed that GSA would handle the disposal of this vessel due to significant state and local interest in receiving the vessel through the Federal Surplus Personal Property Donation Program (40 USC 549). GSA sold the other vessels under the exchange/sale authority. These three vessels were not surplus and therefore, GSA did not involve MARAD in their sales.

Question: Does MARAD provide recommendations for disposal of all obsolete government vessels to GSA? Does MARAD maintain the list of all obsolete government vessels? If not, does GSA share this list with MARAD?

Answer: MARAD does not provide recommendations for disposal of all obsolete government vessels to GSA. GSA does not know if MARAD maintains a list of all obsolete government vessels.

Questions for the Record Submitted by Congressman Sanford D. Bishop

Federal Strategic Sourcing Initiative

It is my understanding that on July 21, 2014, the General Services Administration (GSA) via the Federal Strategic Sourcing Initiative (FSSI), awarded Blanket Purchasing Agreements (BPAs) for selected Janitorial and Sanitation (Jan – San) items to 16 companies to participate in the Jan-San purchase channel. All federal agencies are expected to participate in the Jan-San FSSI program.

Question: Please list the companies and geographic locations of the entities receiving the BPAs.

Answer:

Company	Location
Acuity Specialty Products, Inc. dba Zep Sales & Service	Atlanta, GA
Ansley Business Materials of Chicago, Inc.	Chicago, IL
Capitol Supply (cancelled 7/17/2014)	Sunrise, FL
CAPP, Inc.	Clifton Heights, PA
Document Imaging Dimensions, Inc.	Yorkville, IL
Global Procurement Solutions, Inc.	Columbia, SC
Independent Stationers, Inc. (cancelled 2/5/16)	Indianapolis, IN 46240
Noble Sales Co., Inc.	Rockland, MA
Premier & Companies, Inc.	New York, NY
Shelby Distributions Inc.	El Paso, TX
Staples Contract & Commercial Inc. dba Staples Advantage (“Staples”)	Englewood, NJ
Sterling Business Machines, Inc.	Sterling, IL
Supplies Now	Greenacres, FL
The Office Group Inc. dba Stephens Office Supply	Poquoson, VA

TSRC Inc. dba Frank Parsons Co - The Supply Room	Ashland, VA
W. W. Granger Inc.	Lake Forest, IL
WECsys LLC	Brooklyn Park, MN
Wrigglesworth Enterprises Incorporated	Wilmington, NC

Question: Of the companies participating in the FSSI, how many of them are social disadvantage-owned businesses?

Answer: Initial BPAs were awarded to 18 companies on the JanSan Purchasing Channel. Of those eighteen companies, fifteen were small. Two of the originally awarded contractors have since requested that their BPAs be cancelled. Of the sixteen remaining BPAs, thirteen are with small businesses. Six of these companies are woman-owned small businesses and two are service-disabled-veteran-owned small businesses.

Question: Of the companies participating in the FSSI, how many of them are social disadvantaged Service-Disabled Veteran-Owned Small Businesses (SDVOSBs). Please identify company(ies) and where they are headquartered.

Answer:

Company	Location
Global Procurement Solutions, Inc.	Columbia, SC
Shelby Distributions, Inc.	El Paso, TX

Question: What is the federal spending on Janitorial and Sanitation products? Of this amount, how much will be spent on products only available through the FSSI Jan-San solution?

Answer: The 2013 JanSan Business Case and Strategy identified total federal JanSan spend at \$1.2B per year with \$599M addressable through the JanSan FSSI. Actual spend through the JanSan Purchasing Channel solution in the first year (FY 15) was \$11M. Projected spend for FY16 is \$27M.

Question: Of the amount designated for FSSI program, how much is available to AbilityOne products?

Answer: The Business Case and Strategy identified \$336M in AbilityOne spend. All BPA holders, with the exception of those awarded under Category Four only, were required to become (and remain throughout the life of the BPA) AbilityOne authorized distributors. Authorized

distributors are not required in Category Four, Motorized Cleaning Equipment and Accessories, because no AbilityOne items were identified in this category.

To ensure that products in FSSI were in compliance with AbilityOne requirements, the Market Basket was reviewed by AbilityOne and products identified as AbilityOne products have been annotated as mandatory in Categories 1, 2 and 3 (respectively, Cleaning Compounds and Related Dispensers; Non-motorized Cleaning Equipment and Waste Receptacles; and Paper Products and Related Dispensers)

Question: To what extent is federal agency participation in the FSSI program discretionary?

Answer: While primarily used at an agency's discretion, FSSI participation is highly encouraged. In 2005 and again in 2009, OMB memorandums require agencies to identify commodities that could leverage strategic sourcing and improve government acquisition. In addition, the Federal Acquisition Regulation (FAR) Section 8.004 requires agencies consider procurement instruments intended for use by multiple agencies, including FSSIs, before pursuing commercial sources in the open market.

Question: To what extent are SDVOSBs and social disadvantaged businesses receiving contracts for products not covered by the FSSI solution? Please identify the number of companies and the amounts they have been awarded. Also describe the steps GSA is taking to ensure that SDVOSBs and minority-owned businesses are not disadvantaged by the FSSI program.

Answer: Information to the extent service-disabled veteran-owned small businesses (SDVOSBs) or other small disadvantaged businesses (SDBs) are receiving contracts for products not covered by the FSSI solution is not readily available. GSA is committed to helping all small businesses, including SDVOSBs and SDBs in Category Management and Strategic Sourcing as listed below:

- Strategies must maintain or increase current percentage of small business dollars spent in that commodity as one of the key principles and performance measures
- When a procurement solution is part of a Category Management strategy, providers must engage with small businesses early in the acquisition process to identify and reduce barriers to entry and success (e.g., lengthening standard delivery times to reduce shipping costs or allowing for teaming arrangements).
- SBA is a voting member of the Category Management Leadership Council and sits on all the commodity teams

Question: Also explain to what extent the agency is implementing provision of P.L. 109-461, describing the number of SDVOSBs engaged as contractors and the total amount awarded in contracts.

Answer: Public Law 109-461, The Veteran's Health Care and Technology Act applies only to Department of Veteran's Affairs acquisitions. That said, one of GSA's key initiatives is to make it easier for suppliers, including SDVOSBs, to work with the government. We want companies

to do business with the government with as little burden and delay as possible, to have the tools and support they need to be successful, and to understand the procurement process and how to seek business.

Exceeding the SDVOSB contracting goal is one of GSA's top priorities. GSA met and exceeded the 3-percent SDVOSB prime contracting goal for the last three fiscal years (FY 2012 - FY 2014). Preliminary numbers indicate that we also exceeded the 3-percent SDVOSB prime contracting goal for FY 2015. In addition, from FY 2014 to FY 2015, GSA increased agency-wide contract actions to SDVOSBs by 9.91% and contract dollars by 9.64%.

	Actions	Dollars	Percentage
FY14 SDVOSB Achievement (final Scorecard data)	5,926	\$163,100,560.30	4.17%
FY15 SDVOSB Achievement (preliminary data)	6,513	\$178,827,995.35	4.79%
FY16 SDVOSB Achievement (as of 3-10-16)	3,633	\$51,978,068.90	3.67%

Question: Are you coordinating efforts to ensure the robust engagement of SDVOSB's with the US Department of Veterans Affairs, and other federal agencies? If so, please describe.

Answer: GSA is very committed and active in efforts to make the most opportunities available to veteran owned small businesses as well as providing those businesses support and customer assistance to remove barriers to their efforts to do business with the GSA. GSA has had success with awards to SDVOSBs under various programs. Our Office Supplies (OS3) Purchasing Channel made three awards to SDVOSBs from a total of 24 awards made, while the One Acquisition Solution for Integrated Services (OASIS) SB had 18 awards made to SDVOSBs. So while GSA is currently exceeding its goals for small business and SDVOSB contracting for fiscal year 2016, we're not going to sit back and relax. We are seeking to support the veteran-owned business community through a variety of acquisition mechanisms, including Schedules:

The Veterans Technology Services (VETS) GWAC solicitation was set-aside for service-disabled veteran-owned (SDVO) small technology firms. Contracts were awarded in FY 2007. The VETS GWAC option period of performance (February 2, 2012 to February 1, 2017) was exercised in February 2012 to the listed industry partners. The GWAC has a \$5 billion program ceiling and two functional scope areas including Systems Operations & Maintenance and

Information Systems Engineering. All ordering procedures are based on a Fair Opportunity (FAR 16.505).

In addition, Eric Ferraro, GSA's Assistant Commissioner for the Integrated Award Environment was appointed as GSA's Senior Executive Service Representative. Mr Ferraro is a twenty year Navy Veteran, with tours on a submarine and aircraft carrier, and in the implementation of business information technology systems for the Navy". He also was on the industry side for seven years before joining the Navy as a civil servant in 2005 giving him a unique and valued perspective to help veteran small business owners. Mr. Ferraro is also a member of the Interagency Task Force for Veterans Business Development lead by the Small Business Administration (SBA).

[illegible]

[illegible]

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FY 2016 – Original

FY16 Projects	Original Total	Previous (Cumulative)	Change	Current Change	New Total
Weis U.S Courthouse – Pittsburgh, PA (DHS ICE)	\$ 3,540,962	\$ 0		\$ 0	\$ 3,540,962
Weis U.S Courthouse – Pittsburgh, PA (SSA)	\$ 3,756,469	\$ 0		\$ 0	\$ 3,756,469
Mazzoli Federal Building – Louisville, KY (IRS)	\$ 290,150	\$ 0		\$ 0	\$ 290,150
EJ Bean Federal Center – Indianapolis, IN (DOD DFAS)	\$ 775,500	\$ 0		\$ 0	\$ 775,500
Iowa City Federal Building – Iowa City, IA (VA VHA)	\$ 3,439,415	\$ 0		\$ 0	\$ 3,439,415
Denver Federal Center – Denver, CO (EPA)	\$ 8,893,522	\$ 0		\$ 0	\$ 8,893,522
Denver Federal Center – Denver, CO (DOI BOR)	\$15,074,090	\$ 0		\$ 0	\$15,074,090
Phoenix Federal Building and U.S. Courthouse – Phoenix, AZ (DHS ICE)	\$ 231,763	\$ 0		\$ 0	\$ 231,763
Philip Burton Federal Building and U.S. Courthouse – San Francisco, CA (DOJ ADOJ District)	\$14,577,925	\$ 0		\$ 0	\$14,577,925
Clenn M. Anderson Federal Building – Long Beach, CA (IRS)	\$ 559,459	\$ 0		\$ 0	\$ 559,459
Ronald Dellums Federal Building and U.S. Courthouse – Oakland, CA (MSFD)	\$ 1,430,190	\$ 0		\$ 0	\$ 1,430,190
Ronald Dellums Federal Building and U.S. Courthouse – Oakland, CA (IRS)	\$ 4,009,759	\$ 0		\$ 0	\$ 4,009,759
James C. Corman Federal Building – Van Nuys, CA (DOD DCMA)	\$ 1,976,199	\$ 0		\$ 0	\$ 1,976,199
Federal Office Building – Seattle, WA (DOI NPS)	\$ 1,334,584	\$ 0		\$ 0	\$ 1,334,584
South Interior Federal Building – Washington, DC	\$15,000,000	\$ 0		\$ 0	\$15,000,000

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(DOI)					
Total	\$75,000,000	\$	0	\$	0 \$75,000,000

**Weis U.S. Courthouse - Pittsburgh, PA (ICE)
\$3,540,962**

The Department of Homeland Security - Immigration and Customs Enforcement (ICE) currently occupies 19,798 usable square feet in a lease located in Pittsburgh, PA. The lease expires on February 15, 2019. The lessor indicated to GSA that it is no longer interested in retaining ICE as a tenant in its building. GSA proposes moving ICE from the leased location into federally owned space in the Weis U.S. Courthouse and decrease ICE's usable square footage from 19,798 to 15,201, representing a 23 percent footprint reduction. GSA does not have lease termination rights but the project completion is planned to coincide with the lease expiration. This consolidation is expected to save ICE approximately \$418,000 in annual rent costs, a 45 percent reduction, and is projected to improve the office utilization rate from 185 to 105, a 43 percent improvement in office utilization.

In addition to consolidation funding to cover build-out costs, ICE will provide approximately \$3,250,000 for move, information technology, and other project costs.

**Weis U.S. Courthouse - Pittsburgh, PA (SSA)
\$3,756,469**

The District Office for the Social Security Administration (SSA) in Pittsburgh, PA, and the Area District Office in Coraopolis, PA, currently occupy 22,098 usable square feet in two leased locations. The two leases expire on November 15, 2017, and October 31, 2019, respectively; although GSA has lease termination rights for both leases. GSA proposes moving SSA from the leased locations into federally owned space in the Weis U.S Courthouse, decreasing SSA's usable square footage from 22,098 to 12,755, a 42 percent footprint reduction. This consolidation is expected to save SSA approximately \$347,000 in annual rent costs, a 49 percent reduction, and is projected to improve the office utilization rate from 356 to 133, a 63 percent improvement in office utilization.

In addition to consolidation funding to cover build-out costs, SSA will provide approximately \$803,000 for move, information technology, and other project costs.

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**Mazzoli Federal Building - Louisville, KY (IRS)
\$290,150**

The Department of Treasury - Internal Revenue Service (IRS) currently occupies 36,361 usable square feet in the Mazzoli Federal Building and 22,423 usable square feet in two leased locations: Meidinger Tower and Ormsby Station. These two leases expire on November 30, 2016, and April 30, 2018, respectively; although GSA has lease termination rights on both leases. GSA proposes moving IRS from the leased locations into federally owned space in the Mazzoli Federal Building, decreasing IRS's usable square feet from 53,613 to 34,393, a 36 percent footprint reduction. This consolidation is expected to save IRS approximately \$486,000 in annual rent costs, a 44 percent reduction, and is projected to improve the office utilization rate from 266 to 153, a 42 percent improvement in office utilization.

In addition to consolidation funding to cover build-out costs, IRS will provide approximately \$79,000 for move, information technology, and other project costs.

**EJ Bean Federal Center - Indianapolis, IN (DFAS)
\$775,500**

The Department of Defense - Defense Finance and Accounting Service (DFAS) currently occupies 898,837 usable square feet in the EJ Bean Federal Center in Indianapolis, IN. GSA proposes reducing the DFAS Travel Pay and Transportation offices' current occupied space in the building. This project will decrease the usable square feet for these two functions from 77,686 to 43,372, a 44 percent footprint reduction. The reduction in space creates the opportunity to pilot DFAS's national workplace standards, paving the way for more reductions in DFAS's footprint. GSA anticipates filling the resulting vacant space through leased consolidation projects involving the Department of Homeland Security - Customs and Border Protection and the Department of Defense - Marine Corps. The project proposed in this spend plan is expected to save DFAS approximately \$650,000 in annual rent costs, a 39 percent reduction in rent, and improve the office utilization rate from 158 to 73 square feet per person, a 54 percent improvement in office utilization.

In addition to consolidation funding to cover build-out costs, DFAS will provide approximately \$1,040,000 for furniture and other project costs. DFAS plans to leverage GSA's Total Workplace FIT (Furniture and Information Technology) fund to cover \$970,000 for furniture costs.

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**Iowa City Federal Building and U.S. Post Office - Iowa City, IA (VHA)
\$3,439,415**

The Department of Veterans Affairs (VA) - Veterans Health Administration (VHA) has a need for 33,000 usable square feet to serve the veterans in Iowa City, IA. VHA currently resides on the VA Hospital Campus in Iowa City. GSA proposes moving portions of the VHA dental, physical therapy, information technology, and administrative functions from the Hospital Campus into the Iowa City Federal Building and U.S. Post Office instead of procuring a new leased location. This consolidation into Federal space will allow other VA entities to expand on the Hospital Campus. When comparing lease market rates with federally owned rates, the consolidation into Federal space is expected to save VHA approximately \$1,100,000 in annual rent costs, a 59 percent reduction, and is projected to maintain an 81 square feet office utilization rate.

In addition to consolidation funding to cover build-out costs, VHA will provide approximately \$5,100,000 for move and other project costs.

**Federal Center - Denver, CO (EPA)
\$8,893,522**

The Environmental Protection Agency (EPA) currently occupies 34,100 usable square feet in a lease located in Golden, CO, and 114,083 usable square feet in the Denver Federal Center Building 25. The lease expires on March 22, 2018, and the project completion is planned to coincide with the lease expiration. GSA proposes moving the EPA Central Regional Laboratory from the leased location into federally owned space in the Denver Federal Center Building 25. The consolidation will decrease usable square feet from 148,183 to 114,084, a 23 percent footprint reduction. This consolidation is expected to save EPA approximately \$2,214,000 in annual rent costs, a 38 percent reduction, and is projected to improve the office utilization rate from 254 to 148, a 42 percent improvement in office utilization.

In addition to consolidation funding to cover build-out costs, EPA will provide approximately \$6,200,000 for move, furniture, information technology, and other project costs.

**Federal Center - Denver, CO (BOR)
\$15,074,090**

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The Department of Interior - Bureau of Reclamation (BOR) currently occupies 275,107 usable square feet in the Denver Federal Center Buildings 56 and 67. GSA proposes reducing BOR's current space from 275,107 usable square feet to 187,766, a 32 percent footprint reduction. GSA plans to backfill the 87,341 usable square feet vacated by this consolidation with other Interior operations, such as Fish and Wildlife Service, Office of the Solicitor, and the Office of Surface Mining. All three of these DOI offices currently reside in leased locations in the Denver area. This consolidation is expected to save BOR approximately \$1,613,000 in annual rent costs, a 22 percent reduction, and is projected to improve the office utilization rate from 215 to 129, a 40 percent improvement in office utilization.

In addition to consolidation funding to cover build-out costs, BOR will provide approximately \$4,740,000 for move, furniture, information technology, and associated project costs.

Federal Building and U.S. Courthouse - Phoenix, AZ (ICE)

\$231,763

The Department of Homeland Security - Immigration and Customs Enforcement (ICE) currently occupies 7,902 usable square feet in a lease located in Phoenix, AZ. The lease expires on September 16, 2016, although GSA has lease termination rights. GSA proposes moving ICE from the leased location into federally owned space in the Phoenix Federal Building and U.S. Courthouse to decrease usable square feet from 7,902 to 3,216, a 59 percent footprint reduction. This consolidation is expected to save ICE approximately \$192,000 in annual rent costs, a 68 percent reduction, and is projected to improve the office utilization rate from 685 to 80, an 88 percent improvement in office utilization.

Over the last 10 years, ICE has been gradually reducing personnel at this location. As a result, ICE has a much higher office utilization than it needs and requested assistance to improve its utilization rate. The significant office utilization improvement will be the result of workplace optimization given their reduced headcount. Of the 3,216 usable square feet in the new location, less than 1,000 usable square feet is office space, with the remaining area consisting of secured evidence, laboratory, and communications rooms.

In addition to consolidation funding to cover build-out costs, ICE will provide approximately \$174,000 for move, information technology, and other project costs.

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**Phillip Burton Federal Building and U.S. Courthouse - San Francisco, CA (ACOE)
\$14,592,646**

The Phillip Burton Federal Building and U.S. Courthouse has 145,660 usable square feet of vacant space. GSA proposes to fill this vacancy with the Department of Defense - Army Corps of Engineers (ACOE) - District which currently occupies 41,865 usable square feet of leased space. The lease will expire on February 15, 2017. GSA proposes moving ACOE - District to federally owned space in order to save the agency approximately \$2,016,000 in annual rent costs, a 31 percent reduction. Although the office UR will increase from 118 to 147 due to the agency workstation standards and program of requirements, the new space will realize a significant annual lease cost avoidance of over \$6 million.

In addition to consolidation funding to cover build-out costs, ACOE will provide approximately \$2,511,000 for move, furniture, information technology, and other project costs.

**Glenn M. Anderson Federal Building - Long Beach, CA (IRS)
\$569,469**

The Department of Treasury - Internal Revenue Service (IRS) currently occupies 55,831 usable square feet in a lease located in El Segundo, CA. The lease expires on January 24, 2017, although GSA has lease termination rights. GSA proposes moving the IRS from the leased location into federally owned space in the Glenn M. Anderson Federal Building and decrease the IRS' usable square feet from 55,831 to 31,385, representing a 44 percent footprint reduction. This consolidation is expected to save the IRS approximately \$820,000 in annual rent costs, a 44 percent reduction, and is projected to improve the IRS office utilization rate from 178 to 106, a 41 percent improvement in office utilization.

In addition to consolidation funding to cover build-out costs, the IRS will provide approximately \$355,000 for move, furniture, information technology, and other project costs.

**Ronald Dellums Federal Building and U.S. Courthouse - Oakland, CA (MSPB)
\$1,430,190**

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The Merit Systems Protection Board (MSPB) currently occupies 5,505 usable square feet in a lease located in San Francisco, CA. The lease expires on July 25, 2017. The project completion is planned to coincide with the lease expiration. GSA proposes moving MSPB from the leased location into federally owned space in the Ronald Dellums Federal Building and U.S. Courthouse. This consolidation is expected to save MSPB approximately \$300,000 in annual rent costs, a 45 percent reduction, and is projected to improve MSPB's office utilization rate from 139 to 132, a 5 percent improvement in office utilization.

In addition to consolidation funding to cover build-out costs, MSPB will provide approximately \$83,000 for move, information technology, and other project costs.

**Ronald Dellums Federal Building and U.S. Courthouse - Oakland, CA (IRS)
\$4,009,759**

Following the June 2016 completion of the FY14 Consolidation Activities project, Phase 1 Department of Treasury - Internal Revenue Service (IRS) Dellums Building consolidation, IRS will occupy 216,666 usable square feet in the Ronald Dellums Federal Building and U.S. Courthouse, and 25,565 usable square feet in a lease located in Walnut Creek, CA. A majority of the space covered by the lease expires on October 15, 2016, and the remaining portion expires on December 9, 2025. GSA has lease termination rights for both leases. For Phase 2 of this project, GSA proposes moving the IRS out of the Walnut Creek, CA, location into federally owned space in the Dellums building. Phase 2 is planned to decrease the IRS' total usable square feet from 216,666 to 173,779, a 20 percent footprint reduction. This consolidation is expected to save the IRS approximately \$970,000 in annual rent costs, a 12 percent reduction. Phase 2 is projected to improve the office utilization rate from 173 to 136, a 21 percent improvement in office utilization.

In addition to consolidation funding to cover build-out costs, IRS will provide approximately \$760,000 for move, information technology, and other project costs.

James C. Corman Federal Building - Van Nuys, CA (DOD DCMA) \$1,976,199

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The Department of Defense - Defense Contract Management Agency (DCMA) currently occupies 28,245 usable square feet in space controlled by the Department of Veterans Affairs North Hills, CA. VA plans to use the space for its mission requirements, necessitating DCMA to relocate, and has asked for GSA assistance. Rather relocating the agency into leased space, GSA proposes to move DCMA into GSA-controlled, federally owned space in the James C. Corman Federal Building. DCMA will decrease its usable square feet from 28,245 to 21,378, a 24 percent footprint reduction. This consolidation is expected to save DCMA approximately \$600,000 in annual rent costs, a 46 percent reduction, and is projected to improve the office utilization rate from 92 to 65, a 29 percent decrease in office utilization.

In addition to consolidation funding to cover build-out costs, DCMA will provide approximately \$256,000 for move, furniture, information technology, and other project costs.

**Federal Office Building - Seattle, WA (NPS)
\$1,334,584**

The Department of Interior (DOI) - National Park Service (NPS) currently occupies 23,339 usable square feet in the Federal Office Building in Seattle, WA. GSA proposes decreasing NPS' usable square feet from 23,339 to 14,520, a 38 percent footprint reduction. This consolidation is expected to save NPS approximately \$149,833 in annual rent costs, a 20 percent reduction, and is projected to improve the office utilization rate from 209 to 107, a 49 percent improvement in office utilization.

The release of Federal space will create the opportunity to backfill the vacated space with several Federal agencies located in leased space in Seattle. GSA is currently evaluating backfill opportunities.

In addition to consolidation funding to cover build-out costs, DOI NPS will provide approximately \$124,000 for move and information technology costs.

South Interior Federal Building - Washington, DC (DOI) \$15,000,000

The Department of Interior (DOI) currently occupies 132,923 usable square feet in a lease located in Washington, DC. The lease expires on July 15, 2017. GSA does not have lease

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termination rights; however, the project completion is planned to coincide with the lease expiration. GSA proposes consolidating the DOI leased location into federally owned space in the South Interior Federal Building. The consolidation will decrease the total DOI usable square feet from 132,923 across the two locations to 61,218, representing a 54 percent footprint reduction. This consolidation is expected to save DOI approximately \$4,800,000 in annual rent costs, a 59 percent reduction, and is projected to improve the office utilization rate from 236 to 128, a 46 percent improvement in office utilization.

In addition to consolidation funding to cover build-out costs, DOI will provide approximately \$2,940,000 for move, furniture, information technology, and other project costs.

MONDAY, MARCH 14, 2016.

OFFICE OF PERSONNEL MANAGEMENT

WITNESS

HON. BETH F. COBERT, ACTING DIRECTOR, U.S. OFFICE OF PERSONNEL MANAGEMENT

Mr. CRENSHAW. The hearing will come to order.

Good afternoon, everyone. And we welcome our witness, Acting Director Beth Cobert.

Thank you for being here today to talk about the Office of Personnel Management's budget request of \$321 million for fiscal year 2017. Last time you appeared before this committee, you were on the job for approximately 3 weeks, right after OPM was in the headlines for months for a pair of data breaches that compromised the privacy and security of over 21 million people. These breaches have been described as the largest cybersecurity attack against the United States Government. Now that you have been on the job for more than 8 months, I want to hear how the agency proposes to use its funds to strengthen cybersecurity and to assist the data breach victims.

Specifically, last year, this committee provided OPM with \$21 million to improve its IT infrastructure and security. Now, this year, your agency is requesting an additional \$31 million for additional upgrades. We are well aware of your past attempts to modernize the Federal retirement system. That has dragged on for close to two decades now, and that has been at the taxpayers' expense, and that was, as we understand it, hindered by a number of weak management practices.

Critical to the success of any large IT project is thoughtful planning, budgeting, and collaboration at the outset. So we look forward to discussing with you how you plan to manage these critical IT projects.

Now, the Inspector General has had some serious concerns about the infrastructure improvements and how you fully overhaul the agency's technical infrastructure. The IG says that in 2015, he did an audit that said you failed to complete the major business case plans for capital acquisition, failed to provide the full scope and cost of the project, and failed to explain how legacy applications that are critical to OPM's operations will be updated and migrated into the new IT environment.

The committee hopes that OPM will adhere to OMB's guidance on planning and budgeting for large IT projects, and we look forward to hearing how you have addressed the IG's concerns to reduce the risk of project failure. We expect OPM to also demonstrate measurable outcomes throughout the lifecycle of this security upgrade.

Earlier this year, the administration announced that it would establish a new government-wide service provided for background investigations called the National Background Investigation Bureau. This Bureau would be housed in your agency, but it would be funded, in part, by funds appropriated to the Department of Defense and, in part, by fees charged to different agencies.

Now, in the course of setting up the Bureau, you would shut down the agency's Federal Investigative Services Office that currently conducts these background investigations. Now, closing this office is a significant organizational change, and that requires OPM to submit a letter to the committee under Section 608 of the fiscal year 2016 omnibus bill. And I am disappointed that it took numerous requests on our part to provide the committee with a 1-hour briefing on the Bureau that only occurred last week, and we have yet to receive the letter.

So, as such, this subcommittee and the Defense Subcommittee, which I am also a member of, got a lot of questions about the out-year funding for this proposal, lines of authority between OPM and DOD and their IGs, and the potential for fee increases for background investigations, which would largely be borne by these agencies. I hope you can shed some light on these concerns today.

Lastly, I would like to discuss OPM's role in creating a first rate workforce for the 21st century. We have been reading about the graying of the Federal workforce for years, the demand for skilled workers, and the need to improve the USAJOBS online application portal. I look forward to your thoughts on how OPM will help recruit, retain, and develop a top-notch workforce that enables the Federal agencies to carry out their critical missions.

Likewise, your agency must act to build a cohesive senior management team for itself that communicates effectively with each other, with their IG, and with Congress. With many new senior staff joining OPM as well as recent turnover in the high-profile positions, your agency should seize this opportunity to demonstrate to Federal agencies how to recruit, how to develop, and how to strengthen an exemplary management team. So, thanks again for taking the time to meet with us.

I would like to turn now to my ranking member, Mr. Serrano, for any remarks he might make.

Mr. SERRANO. Thank you, Mr. Chairman.

I would also like to welcome Acting Director Beth Cobert back before the subcommittee. It is good to see you, and I look forward to hearing your testimony shortly.

As we all know, the Office of Personnel Management has had its fair share of issues arise over the past year, and members on both sides have expressed serious concerns. And I want to emphasize that, this is one of those issues where both parties have agreed that it happened; it was bad, and it can't happen again. Something has to be done.

But I believe it should also give us more resolve to provide OPM with the resources it needs to protect the millions of Federal employees from having their personal information and records compromised. Acting Director Cobert, I am confident that you are the right person to lead the agency and help restore trust at OPM.

Your appointment comes through in the crucial remaining months of this administration.

As the Nation's largest workforce, the Federal Government must continue recruiting, hiring, training, and retaining the very best and brightest. We must also ensure that our Federal workforce is as diverse as the American people that it serves. Our Federal employees are on the front lines of providing the services that countless Americans depend on each and every day, and they must get the respect, compensation, and benefits they deserve. We must also recognize our Federal retirees and protect the benefits that they have duly earned for their many years of service. That is why OPM is such a critical agency.

For 2017, OPM is requesting \$321 million, which is nearly 50 million more than last year's enacted level. These investments will help OPM carry out its agency priority goals which include enhancing the quality of background investigations, moving toward an electronic applications process for retiring employees, improving health outcomes for 8.2 million FEHB enrollees, and continuing to bolster the security of OPM's information systems.

As time and technology change, the Federal Government should work to keep up with it. That is why I support the President's budget request for OPM, as it represents a step in the right direction in providing those necessary investments that the agency needs to improve in performance and the delivery of benefits to its employees. I urge my colleagues to join me in supporting the request as well. Although, OPM continues to work to meet its challenges, chief among them is protecting the valuable information of Federal employees and retirees and continuously monitoring for possible malicious behavior.

Last year, the majority refused to fully fund your efforts to comprehensively address many of the IT infrastructure challenges that you are facing. And this year, you are formally including these funding requests within your budget justification. In my opinion, we must support these efforts and stand with OPM in order to protect the personal information of Federal employees.

I thank you again for joining us this afternoon. I wish you the best of luck with your pending nomination, and I hope my colleagues in the Senate will act quickly to ensure your confirmation to lead OPM during the final few months of the President's term.

Thank you, Mr. Chairman.

Mr. CRENSHAW. Well, thank you.

Now I would like to recognize the Acting Director. If you would keep your statement to about 5 minutes. Your full statement will be included in the record, so the floor is yours.

Ms. COBERT. Thank you, Chairman Crenshaw, Ranking Member Serrano, members of the subcommittee. Thank you for the opportunity to testify before you today regarding the U.S. Office of Personnel Management's fiscal year 2017 budget request. As you know, OPM's discretionary budget consists of funds from two appropriated sources which are used to perform OPM's fundamental roles as human resources agency, personnel policy manager, and earned benefits program administrator for the Federal Government. These funds, the salary and expenses and trust fund transfers, represent 14 percent of OPM's total operating costs of \$2.1 bil-

lion. OPM operates several programs that are funded on a fee-for-service basis. These fees are charged to other agencies based on actual costs of services provided, and are managed through a revolving fund.

These revolving fund programs include the Federal Investigative Services, which provides investigative products and services for Federal agencies to use as the basis for suitability and security clearance determinations. This makes up the largest component of the revolving fund. Human Resources Solutions, under which OPM provides various human resource services to agencies. This makes up a smaller component of the revolving fund. And USAJOBS, the U.S. Government's official Web-based job board for Federal jobs and employment information, which is an even a smaller component of the revolving fund.

OPM's fiscal year 2017 discretionary budget request builds on the progress already made with a focus on management discipline, ensuring decisions are made based on reliable data, and delivering excellent customer service in accordance with OPM's Strategic Plan. OPM's budget also looks to make critical investments, including substantial additional resources for IT operations, funds for implementation of a new financial system to support administration of OPM's earned benefit trust funds, and support of OPM's Retirement Services.

To fund these critical investments, the budget proposes an increase of \$44 million in appropriated funds. OPM is responsible for operating and maintaining the IT systems used to support the recruitment, hiring, and management of Federal employees and administration of their benefits. OPM is also responsible for the IT systems that support the background investigations process.

OPM's fiscal year 2017 request includes \$37 million to enable OPM to continue the ongoing enhancement of the security of OPM's current IT infrastructure and systems, while simultaneously standing up a new infrastructure called the Shell, that is starting to be deployed this year. OPM will use the fiscal year 2017 funding to support migrating the existing legacy systems to this more modern and more secure infrastructure.

A dual environment of legacy systems and the Shell must be maintained during the migration period to allow time to replace or re-engineer the existing systems without affecting current services. The funds we are requesting for fiscal year 2017 are critical to ensure OPM can continue to make progress in strengthening the cybersecurity posture of its systems and modernizing those systems.

Each year, OPM receives about 100,000 new retirement claims and handles post retirement services for 2.5 million Federal annuitants, survivors and their families. While we are making progress in our work to improve the timeliness and accuracy of the customer service experience for the 1.8 million calls and emails we receive annually, challenges remain. The fiscal year 2017 budget includes \$1.5 million to increase the number of Retirement Services staff that respond to these customer inquiries.

In January, the administration announced a framework for strategic and structural changes to modernize and fundamentally strengthen how the Federal Government performs background investigations. In conjunction with this effort, OPM will stand up the

National Background Investigations Bureau, or NBIB, a government-wide service provider for background investigations, which will be housed within OPM. It is important to note that OPM is not requesting additional funding for this part of the transition work, which will be supported by the revolving fund.

DOD will design, build, secure, and operate the NBIB's investigative IT systems. We anticipate that the process of transitioning responsibility for the IT support of our background investigation systems to DOD will not be completed in fiscal year 2017, and that OPM will continue to need funding to support and secure these systems in fiscal year 2017.

I want to thank the committee for its support of our fiscal year 2016 budget request. OPM will continue to strengthen our cybersecurity and IT posture, stand up the NBIB, continue to provide quality background investigations services, support Federal retirees, and implement the initiatives that make up the people and culture pillar of the President's management agenda so that OPM may lead agencies in their efforts to recruit, train, and retain a world-class workforce. Thank you for the opportunity to testify today, and I am happy to address any questions you may have.

[The information follows:]



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT

**STATEMENT OF
THE HONORABLE
BETH F. COBERT
ACTING DIRECTOR
U.S. OFFICE OF PERSONNEL MANAGEMENT**

before the

**SUBCOMMITTEE ON FINANCIAL SERVICES AND GENERAL GOVERNMENT
COMMITTEE ON APPROPRIATIONS
UNITED STATES HOUSE OF REPRESENTATIVES**

on

“U.S. Office of Personnel Management FY 2017 Budget Request”

March 14, 2016

Chairman Crenshaw, Ranking Member Serrano, and Members of the Subcommittee:

Thank you for the opportunity to testify before you today regarding the U.S. Office of Personnel Management's (OPM's) Fiscal Year (FY) 2017 budget request. I want to begin by saying that I am honored that President Obama has nominated me to be Director of OPM. Every day, OPM's employees are hard at work providing valuable services to their fellow Federal workers and developing policies and strategies to make the government work more effectively for the American people. They are processing retirement claims from across the Federal government, conducting background investigations on prospective and current Federal employees and Federal partners, collaborating with agencies to attract top candidates to Federal service, and providing quality health insurance to Federal employees and their families.

OPM's discretionary budget request consists of two funds used to perform OPM's fundamental roles as human resource agency, personnel policy manager, and earned benefit programs administrator for the Federal government. It is important to note that these funds, Salaries and Expenses and Trust Fund Transfers, represent 14 percent of OPM's total operating budget of \$2.1 billion. Separate and apart from discretionary appropriations, OPM is authorized to transfer funds from the retirement, life and health trust funds without limitation to conduct very specific activities in administering benefit programs, such as the administration of survivor annuities. Funding for these administrative activities represents 3 percent of our operating budget. In addition, OPM operates several programs that are funded on a fee for service basis. These fees are charged to other agencies based on an actual cost basis for the services provided. This funding is managed through a revolving fund. These programs include:

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- Federal Investigative Services (FIS), which equates to 69 percent of the total OPM budget;
- Human Resources Solutions, under which OPM provides services, either directly or through vendors, on various human resources issues, which equates to 9 percent of the operating budget; and
- USAJOBS, the U.S. Government's official system/program for Federal jobs and employment information, which equates to 1 percent of the operating budget.

Altogether, OPM's Revolving Fund is the largest segment of our operating budget, representing 83 percent of the FY 2017 amount.

FY 2017 Budget Request

OPM's FY 2017 discretionary budget request builds on the progress already made with a focus on management discipline, ensuring decisions are made based on reliable data, and delivering excellent customer service in accordance with OPM's Strategic Plan. The request finances most OPM programs and services at levels similar to those enacted for FY 2016, with certain exceptions for critical investments. These critical investments include substantial additional resources for (Information Technology) IT operations, funds for implementation of a new financial system to support administration of OPM's earned benefit trust funds, and support of OPM's Retirement Services including additional customer service staff to address the growth in workload as well as resources to implement recently enacted legislation to reduce improper payments in the disability retirement program. Therefore, to fund those critical investments the budget proposes an increase of \$44 million in appropriated funds.

Security of OPM's IT Infrastructure

OPM is responsible for operating and maintaining the IT systems used to support the recruitment, hiring, and management of Federal employees, and administration of their benefits. It is also responsible for the IT systems that support the background investigation processes that enable adjudication of suitability or fitness for Federal employment, to perform work under a Government contract, to enlist in the armed forces, for eligibility for access to classified information or to hold a position that is otherwise national security sensitive, and eligibility for logical or physical access to Federal agency systems or facilities. Although, as I will discuss later in my testimony, we anticipate that we will be transitioning responsibility for the IT support of our background investigations systems to the Department of Defense (DOD) as part of the stand-up of the National Background Investigations Bureau (NBIB), we expect that this process will not be completed in FY 2017 and that OPM will continue to need funding to support and secure those IT systems in FY 2017.

Since OPM began implementing its IT Strategic Plan in 2014, the agency has invested over \$67 million of appropriated funds to enhance the security of its current infrastructure by procuring and installing new and modern industry-recognized security tools to protect our current infrastructure, and to stand up a new infrastructure as a service environment. In close coordination with our agency partners, OPM continues to make progress on strengthening our

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cybersecurity posture. For example, OPM has implemented the enforcement of Personal Identity Verification cards for two-factor authentication for network access. Additional application security was deployed for the eQIP system, the system used for collecting information from applicants for background investigations, on January 10, 2016. All applicants for federal employment will be asked to generate a second means or “factor” to authenticate their identity. This collection of options thus has enabled “Two Factor” authentication to the system used by background investigation applicants to submit often sensitive information in support of their background investigations for security clearances. OPM has increased the number of scans that allow us to review the entire OPM network for signs of compromise. In February, EINSTEIN 3A, the Department of Homeland Security system to detect and block many of the most significant cyber attacks using classified indicators was deployed to OPM. OPM has worked with our interagency partners to patch vulnerabilities, tighten policies and practices for privileged users, and conduct reviews of our high value asset systems. These steps build on efforts the Administration has taken through the 30-day Cybersecurity Sprint and the release of both the Cybersecurity Strategy and Implementation Plan and the Cybersecurity National Action Plan to increase our cybersecurity capabilities and protect systems and data government-wide. Finally, OPM has hired a new Chief Information Security Officer, four new SES-level employees, and four new senior IT program managers to further strengthen the senior IT team, as well as a new senior cyber and information technology advisor to support the ongoing response to recent incidents, complete development of OPM’s plan to reduce the risk of future incidents, and recommend further improvements to strengthen the security of OPM’s IT. I am confident in the team in place and their ability to continue OPM’s efforts to improve our IT capabilities and security by working across OPM and with our partners throughout government.

OPM’s FY 2017 request includes \$37 million to enable OPM to continue these efforts as we migrate the existing legacy network to the modern, more secure infrastructure (the “Shell”) that will be deployed in FY 2016. The Shell is fully equipped with the hardware, software, and security tools needed to house the combined IT assets of OPM. A dual environment of legacy systems and the Shell must be maintained during the migration period to allow time to replace or reengineer the existing systems without affecting current services, including retirement processing, background investigations, and receipt of agency human resources data. Funds will be used to plan for the replacement or reengineering of the legacy systems, and for the testing and deployment (including necessary training) of newer applications in the Shell. The funds we are requesting for FY 2017 are critical to ensuring OPM can continue to make progress in strengthening the cybersecurity posture of its systems and modernizing these systems.

Modernization of Trust Fund Federal Financial System

OPM exercises stewardship over trust funds in support of Federal employee retirement, health, and life insurance benefits, safeguarding them against waste, fraud, and abuse. The trust funds will pay out an estimated \$145 billion in benefits in FY 2017 out of its approximately \$1 trillion in combined assets. The current system used for financial management and accounting for these benefit programs is critically outdated and is one of the systems that must be replaced or reengineered in order to migrate to the more secure new environment. The budget request

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includes \$9.35 million in FY 2017 to update and secure the Trust Fund Federal Financial System to facilitate effective financial management and accounting of OPM's federal benefit programs.

Retirement Services

OPM receives approximately 100,000 new retirement claims each year and handles post-retirement human resources services, such as health insurance and tax changes, for 2.5 million Federal annuitants, survivors, and their families. Each year, more than 1.5 million current or retired Federal employees and their families call OPM's Retirement Services team with a wide range of questions, and OPM receives more than 300,000 additional questions via e-mail. Each of these interactions is important, and OPM is working to provide these individuals a timely, accurate, and appropriate response. OPM is consistently working to improve the quality of this experience for its customers, administering surveys and analyzing the data to identify customer service trends and focus on areas where improvement and change is needed and providing training for employees. We have made progress, but challenges remain. The FY 2017 budget includes \$1.5 million for Retirement Services to increase the number of staff that responds to customer inquiries. We continue to work to identify opportunities to gain efficiencies in the Retirement Services for all of our stakeholders.

The Bipartisan Budget Act of 2015 amended the Social Security Act to require OPM and the Social Security Administration (SSA) to enter into an agreement to establish a system to better coordinate disability benefits in order to reduce improper payments in the Federal Employees' Retirement System. The law also requires OPM to pay SSA for the costs that SSA estimates it will incur to carry out this agreement. The FY 2017 budget includes \$6 million in additional funding to cover the estimated cost to implement this legislative mandate.

President's Management Agenda - People and Culture

OPM is a co-leader of the People and Culture pillar of the President's Management Agenda (PMA) and agency staff is directly involved in activities to achieve its goals. OPM's FY 2017 budget request supports OPM's efforts to ensure that agencies have the tools necessary to hire, engage, and lead their workforces to meet their missions and be responsive to the needs of the American people.

As part of the PMA, OPM is currently leading "Hiring the Best Talent" efforts to identify issues or challenges in Federal employment, and helping agencies "untie the knots" when confronting difficulties in hiring. OPM is a customer service organization: a key feature of our mission to assist our clients with understanding the existing authorities and tools at their disposal to successfully recruit, develop, and retain the best personnel they can to meet their needs. Accordingly, we have increased our outreach and strengthened our available guidance to Federal agencies. OPM is partnering with agencies to develop workgroups and action plans to pursue challenges related to specific occupational areas (e.g., information technology), position management, training and certification. To help support this process, OPM is also leveraging partnerships, including the Chief Human Capital Officers Council and other key stakeholders to inform future strategies and action plans.

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OPM is also committed to increasing employee engagement across the Federal government as another key element of the PMA. Employees want a job that makes full use of their skills, gives them opportunities for continuous learning, and enables them to make an impact on the people they serve. OPM is proud to be leading this effort and has been charting a course over the past several years for Federal employees to build key skills that lead to improved individual and organizational performance and job satisfaction. These efforts to enhance employee engagement and mission performance involve personnel from across the federal workforce including Chief Human Capital Officers, senior managers, and labor unions representing front line employees across the Executive Branch.

Recognizing that the overwhelming majority of Federal employees – roughly 85 percent – are not in the Washington, DC area, OPM is reaching out to individuals in Federal agencies in geographically diverse areas of the country. Through the Hiring Excellence Campaign OPM has recently launched, OPM will be working directly with agency hiring managers and human resources staff to help them identify skills gaps and find and recruit the best professionals to fill these positions. This allows us to hear directly from hiring managers and supervisors, while also giving us the opportunity to have discussions with Federal agencies about the tools already available to them. We have also launched a Hiring Toolkit on HR University, which includes guidance on the authorities, assessments and data already available to hiring managers. In addition, we are leading efforts in support of the Administration's Cybersecurity National Action Plan, which put in place programs to recruit and retain the most highly qualified cybersecurity workforce and talent across the Federal Government. All of these activities are in addition to our daily oversight responsibilities to help Federal Government agency human resources programs operate in a manner that is effective, follows merit system principles, and meets related civil service requirements.

Our PMA goals around hiring the best talent would not be complete without a strong commitment to diversity; and we are continually focused on recruiting, hiring and retaining a diverse workforce. Through a data-driven approach, we are collecting and reviewing demographic data to address challenges in employing a Federal workforce that draws from all segments of society. We are also providing training to agencies, managers, supervisors and employees to foster diversity and create a more inclusive workplace. OPM works closely with Federal agencies and employees, including Federal employee resource and affinity groups to enlist their support and to achieve common agency-wide goals and objectives in this critically important area.

Equally important is improving the experience for applicants who are seeking employment in the Federal government. In this area, OPM is making significant improvements to USAJOBS, including improved underlying search architecture to make way for better search results for both recruiters and jobseekers, the ability for job seekers to search by geographic locations, making the website mobile friendly, allowing job seekers to access USAJOBS from any device with full access to all features, and simplifying the process by which agencies are able to access USAJOBS data to support recruitment efforts so that agencies and job seekers are better able to find one another. Going forward, OPM is looking to continue to enhance the user experience and

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deliver a website that is thoughtfully crafted, personalized and serves as a valued resource for individuals exploring employment opportunities for federal service.

And finally, a third key pillar of the PMA is supporting the Senior Executive Service, given the critical role that these leaders play in the operations and mission impact of their agencies. Recently, the Administration issued an Executive Order: Strengthening the Senior Executive Service, that reflects the Administration's commitment to investing in and supporting senior leaders and ensuring agencies are developing talent pipelines for the future. OPM looks forward to continuing to support this important effort.

National Background Investigations Bureau

Last year, in light of increasing cybersecurity threats and incidents, the 13-agency Suitability and Security Clearance Performance Accountability Council (PAC) initiated an interagency Suitability and Security Review (the 'Review'). The Review sought the advice of experts within and outside government to seek ways to best secure the sensitive data collected as part of background investigation processes and modernize this critical governmental function so that its governance, workforce and business processes meet higher performance standards. The interagency group was tasked with developing additional enhancements to further secure Federal information and strengthen the systems supporting background investigation processes, as well as with re-examining reforms.

The Review concluded that there was a need to make further reforms to the background investigation function that would build upon the efforts already underway. In January of this year, the Administration announced a framework for strategic and structural changes to modernize and fundamentally strengthen how the Federal Government performs background investigations. OPM has and will work closely with our interagency partners on this effort that is so critical to the integrity of the Federal workforce and our Nation's security. In conjunction with this effort, OPM will stand up the NBIB, a government-wide service provider for background investigations which will be housed within OPM. Pursuant to that strategy, the DOD, with its unique national security perspective, will design, build, secure, and operate the NBIB's investigative IT systems in coordination with the NBIB. As part of developing the timeline for transition, we are working along with DOD to establish an initial schedule to sunset the OPM IT systems currently supporting background investigations. It is important to note that OPM is not requesting additional funding to support this transition work, which will be supported by the fees that are paid to OPM's Revolving Fund by Federal agencies to reimburse the costs of operating NBIB including conducting full background investigations.

To begin the implementation phase of these reforms, we are establishing this month a transition team composed of personnel from PAC member agencies. The team will be responsible for creating a comprehensive implementation plan to support standing up the NBIB and will work closely with OPM's FIS leadership to ensure minimal disruption for agencies that rely on us to perform background investigations. Our goal is to have the NBIB's initial operating capability officially established with a new organizational design and leader by October 2016, though implementation work will remain to be done after this date. OPM would continue to maintain

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and secure the existing systems used for background investigations and collaborate with DOD on the transition to DOD-managed systems and infrastructure. The FY 2017 request does not include additional appropriated funds for OPM for this transition.

I want to thank the Committee for its support of our FY 2016 budget request, which is allowing OPM to continue to strengthen its cyber defenses and IT systems in the face of today's evolving threats, by focusing on technology, people, and processes. We are also committed to implementing provisions of the Consolidated Appropriations Act for FY 2016, which extends identity protection services to help those individuals who were impacted by the malicious cyber intrusions. Along with continuing to improve OPM's cybersecurity and IT posture, our main goals are to work to stand up the new NBIB, while continuing to provide quality background investigation services to our agency customers, and implement the initiatives that make up the People and Culture pillar of the PMA so that OPM may lead agencies in their efforts to recruit, train, and retain a world-class workforce.

Thank you for this opportunity to testify today and I am happy to address any questions you may have.

Mr. CRENSHAW. Thank you very much for that.

Let me ask you, you mention the \$37 million for cybersecurity this year. Last year, I think, there was \$21 million. Was that more just general IT upgrades? That was not so much for cybersecurity? I remember that number was thrown around, kind of informally, that is how much—but I think at the end of the day, was it the \$21 million, that was not so much the new cybersecurity, that was just upgrades?

Ms. COBERT. Thank you, Congressman. There is a set of funding that we are doing to upgrade our systems, including cybersecurity, and part of the \$21 million is for that. Initially, that is the stand-up, this new infrastructure, which we are calling “Shell,” which is a modern environment where you can more easily and more effectively deploy the tools you need in 2016 to have for your system.

So we are deploying Shell, and we will be then, with the money from this year, continuing that deployment and starting the migration of systems and the modernization of systems into that environment. So we have got cybersecurity tools that we are still using on our systems today that make them more secure, the new environment, and the transition of the new systems into that environment.

Mr. CRENSHAW. The upgrade part, is there a way to identify how much that is going to cost throughout its cycle? Is that a separate program that you are upgrading? Can you tell us what progress you have made there, and maybe what is the full lifecycle of that kind of project?

Ms. COBERT. Congressman, as we are doing this, we are thinking about going through the applications one by one and saying, what does it take? What is the most effective path from a security perspective to move this system? What is the most effective and efficient way to do that from a financial perspective as well?

So, for example, in 2017, in our budget request, there is roughly \$10 million to migrate some of the more modern distributed systems. USAJOBS and USA Staffing will get moved to the new environment. There is also funding, a few million dollars, that is to do the planning on the more complex legacy systems, the older and more complex ones, that are hard to move. We want to do that planning in 2017 so that when we make the investments to modernize those systems, we have a clear plan in place; we know what it will take and the funding. So we are doing planning for migration and actual migration in 2017.

Mr. CRENSHAW. So, I remember since last year, in the middle of all the problems, the number was thrown out, well, maybe we need about \$37 million to do all that. And then coincidentally, this year, \$37 million is requested. So I just wonder how—the Inspector General kind of raised the question, where does the number come from? We don’t want to just keep spending more money, which sometimes happens in government. If we spend more money, we need to solve the problem. How did you arrive at this \$37 million? And what—I think you talked a little bit about is that you got to have a plan, and that will be ongoing. But just tell us briefly, how that is different than what you thought about last year? Is it more refined this year in that you know where that \$37 million is going to go?

Ms. COBERT. Congressman, thank you for the question, and we have been working to refine this plan as we move forward and as we learn more. So the funds to operate—part of the \$37 million is the standing up of the new environment and the costs to run that. That part is there. We also have continued to refine and prioritize the order in which we go after systems and the way we go after modernizing the systems so we can assure that we are getting benefits as we go. We have worked this through. We have completed the OMB Exhibit 300 in the fall, and reviewed that with the Inspector General, and expect to continue the ongoing dialogue we have with the Inspector General and his full staff about how we are using this money. But we have a more refined plan. There had been a thought about modernizing the background investigation systems, but with the decisions that have been made about NBIB, that is going to be done through a different forum.

So we are now focused on the ones we can move most rapidly and effectively. That is the one we are specifically requesting the \$10 million to move those today, and to do the planning on some of the more complex systems. You want to have more planning, so you know how to do those right in the next phase.

Mr. CRENSHAW. I got you. And along those lines in the budget request, \$6 million is requested to help build the systems to coordinate the OPM retirement system and the Social Security Administration retirement system. How do you arrive at a number like that? And did you develop a plan, or will you need some more money? Will that be an ongoing thing? Give us some background on what goes into those kinds of decisions.

Ms. COBERT. Sure. The \$6 million with Social Security is a somewhat unique piece. The money is intended for us to be able to coordinate OPM systems and Social Security systems to reduce the amount of improper payments for individuals with disabilities. OPM will make a determination about disability payments, so will SSA, and we need to get those done in a timely and coordinated way so we don't create improper payments and overpayments to individuals. That is the goal of the system.

The system dollars here, per the way we were instructed to do this through the Bipartisan Budget Act are funds requested by OPM, but they are actually changes in SSA systems to work with us, so we worked in this case with SSA to develop that estimate.

Mr. CRENSHAW. And so that is an estimate to get that up and running. That ought to save money in the long run, right? Spend \$6 million today, and if you are making \$48 million in inappropriate payments, and if you cut back on that, then you get your money back. Money well spent. Do you expect to set up the system one time, or do you think that is something you will come back next year and say, well, that is either working or not working, we need some more money?

Ms. COBERT. Congressman, I don't have the details on that, but I can get back to you on that. I know it is intended to do what you said, which is to put the process in place so we can both save the money and not create confusion for lots of citizens out there who, when they get notices about the improper things, it is not helpful to them.

[The information follows:]

Ms. COBERT: The request for \$6 million in no-year funds represents the initial costs SSA has currently estimated it will need to implement the law. This includes SSA's costs for business process development, the coordination of a data matching agreement, and system updates. Costs will be ongoing in future years because OPM is required by the law to reimburse SSA for its estimated costs in implementing the law.

Mr. CRENSHAW. We will have time for other questions. Let's go now to Mr. Serrano.

Mr. SERRANO. Thank you, Mr. Chairman.

Director, once again, let me thank you for being here today during such a difficult time. And part of the difficulty is this statement by the IG that any action you take during the period where you are waiting your confirmation may not be valid. That could be something that people pay attention to or not. But if people make it an issue, it could create problems for a lot of folks. What is the administration's position on this? What are they saying? What is the legal counsel saying to this?

Ms. COBERT. Thank you, Congressman. The administration's position, the view from the Department of Justice who provides the guidance on this issue is very clear, and the guidance indicates that I am acting fully within my authorities in this role. It is consistent with precedent across multiple administrations of both parties. I am serving at the direction of the President. I am confident in the guidance from the Department of Justice in my ability to serve, and I am coming to work every day thinking about how I can help OPM deliver for Federal agencies, for the Federal workforce, for the American public.

Mr. SERRANO. Am I correct in—or are people correct in the rumors I have heard or the statements I have heard that this would become an issue only if someone were to sue over the decision you make?

Ms. COBERT. I believe that is correct, but I am not the lawyer, so I, again, go back to the guidance from the Department of Justice that says I can do what I am doing every day.

Mr. SERRANO. And I am glad you have that guidance, because I have been here for 26 years, and I can not name you which ones, but I do remember situations where people were serving in a position awaiting the full confirmation. It has happened before. So I don't see any problems with you deciding to continue to do your work.

You are asking for an increase in nontrust-fund appropriated resources of \$24.2 million, not including an increase for the Inspector General's Office of \$707,000. What will this increase allow you to do that you would otherwise not be able to accomplish?

Ms. COBERT. Congressman, the increases that we are requesting in our 2017 budget are vital for us to continue the progress we make; to continue to enhance the cybersecurity of our systems and the valuable data that they contain; to continue to enable us to modernize those systems; to ensure that we have the kinds of systems we need in the 21st century and the era that we are operating in today. They will help us make customer service improvements in areas in Retirement Services where we know we have challenges that we need to address.

It will enable the ongoing programs we have to continue to help support bringing talent into the Federal Government. So all those

things, particularly the focus on cybersecurity, are vital to our continued progress, and the funding we are requesting is key to enabling us to do that.

Mr. SERRANO. Now, this is a question that we ask—that comes up at every hearing, because IT is something that changes every day. You know, every gadget we buy, in a couple of months, it is no longer the latest gadget. So, there are people out there with better equipment than we have, is that part of the problem? People out there who maliciously try to find the better equipment? And what usually happens to information when it is breached?

I mean, I want to be clear, I don't want people taking information from anyone that they shouldn't be taking, but when they do get into OPM, for instance, what would they use that information for?

Ms. COBERT. Congressman, as you know, there is a considerable amount of—

Mr. SERRANO. Of course, I am asking you to think like a criminal, you know.

Ms. COBERT. Yeah. And so I don't want to attest to what they might use it for. I can tell you that our focus is on preserving that information, and we have made progress with the funding we have been given to increase the perimeter protection so we can detect people coming in. We have better monitoring of the information as it flows in and out of our systems. We are very proud that we are one of the first agencies to put in place the EINSTEIN 3A capabilities that DHS has deployed. We have also changed, not just by adding tools, but by adding processes and making sure that we are working as an agency and with our interagency partners to have strong defenses, to have strong reactions when attacks come, to make sure we have all the kinds of procedures we had in place, and to put in place tools that are modern, and to continue the process of refreshing those and using those in a smart way.

Mr. SERRANO. Well, with the committee's permission, I would ask that you keep us informed, because this is something, like I said before, that everyone on this committee and this Congress agrees on. This is not a partisan issue. This is an issue of what is correct.

One last question. The administration recently announced that it will establish a new government-wide service provider to be housed in the Department of Defense for the background investigations that are currently housed in OPM. How is that going? At what point are we at with that?

Ms. COBERT. Sure. We have announced a framework with the goal of improving both the security and IT security background investigations, as well as modernizing the way we conduct background investigations building on work that has been done, for example, following the Navy Yard tragedy. So that is what the goal of standing up the NBIB within OPM is and having DOD as its core provider of IT systems and responsible for the cybersecurity of that system.

We are in the early days. We have put in place that framework. We will have the transition team in place by the end of this month as we committed, and we will then begin the detailed work of doing that transition as we have NBIB assume the operations of the Federal Investigative Service, and move forward in a way that enables

us to make progress in modernization, make progress in enhancing cybersecurity but also minimizes the disruption to the very important operations that go on there every day.

Mr. SERRANO. Thank you so much.

Thank you, Mr. Chairman.

Mr. CRENSHAW. Thank you.

Mr. Yoder is recognized.

Mr. YODER. Thank you, Mr. Chairman.

I appreciate your testimony, and I want to follow up on my colleague's questions regarding the NBIB. And it would be helpful as we engage in determining whether it is doing its work, just sort of look at the autopsy of the OPM exposure.

Ms. COBERT. Sure.

Mr. YODER. So if you might just recap for the committee, now that the dust has cleared, and you have had a commission of 13 folks, I think, or something that went through all of this. What are the main findings? How many people were impacted? What was the cost? Do we have a way to quantify the economic impact to the country? Do we have any measures around that? What are the key lessons learned? What are the specific things to help ensure that doesn't happen again? So that is sort of the first question. I have a few follow-ups.

Ms. COBERT. Sure.

So there were two breaches at OPM that compromised personally identifiable information. There was the personnel records breach, and then the background investigation breach. In total, just over 22 million combined between the two of those, most in the background investigation breach.

We have concluded the notification process for all of those individuals and have provided to all of them identity theft insurance, and identity restoration services. We have also created the opportunity for those individuals to apply for credit monitoring and identity monitoring services, and over 2½ million people have signed up for those services. That represents somewhat over 11 percent of the individuals signing up, and that compares to a private sector benchmark, if you look at similar circumstances, of somewhere in the 2 to 3 percent range.

So we have made a very active effort to reach out to people, and we continue to remind them of the services that are available and to encourage them to apply. So we feel like we have gotten to people with those services. Those are now in place, and we are working to implement the extension of those services as was directed in the omnibus for a 10-year period. So we have services in place for individuals.

When we look at the cost, I can talk to you some elements of it, but we have not completed an overall estimate of what the cost is to the economy. There has been costs of providing those services to individuals, which was around \$140 million. This year, it will continue at a somewhat lower level in the coming years, sort of closer to the \$100 million range as we go forward, because you don't have the setup costs that you do in the first year.

We clearly have costs at OPM to strengthen the cybersecurity of our systems. That will be an ongoing cost, that is a necessary cost. I can argue that we should be spending that money, because of

what we need to do to these systems, whether or not they had been breached. I know in agencies across the government, there is a need to improve the cybersecurity of all of our systems, and so we will be making those investments.

You also asked about lessons learned. A critical question, and one I ask myself every day. Let me lay out a couple of things, at least, as a starting point. One, we are operating in an environment that has a level of threat around cybersecurity that is just fundamentally different than what it was in the past, and we need to accept that that is the environment. We have to find a way to adapt.

As one of my colleagues from DHS quoted, the modern IT and Internet world was designed for offense, not defense. And for those of us who are in the posture of defense, we have got to figure out a way to respond to that. So that is one piece.

That does mean, too, that we have got to find a way to continually modernize and refresh our systems. We have to have modern tools in place. We have to do that in a regular cycle, so we are not playing catch-up.

Third takeaway for me is that when we think about cybersecurity, we have to build it not just into tools that protect the systems, we have got to build it into systems, and we have got to build it into the mindset of every individual, whether they are an IT leader, a human resources leader, it is everyone's responsibility. It is your responsibility to know not to click on an email that seems interesting, but you don't recognize. We have got to recognize that we need to change the way we work sometimes. I take my OPM computer home with me. I didn't used to have to do that, you know, in other circumstances. We have to do that now.

So it is everybody's responsibility to think about cybersecurity, think about how we design our systems, to think about how we come together.

And the last lesson I would take away is that an effective response demands a whole-of-government approach, and that was one of might have great lessons from when I arrived at OPM this summer. We had, as you mentioned, we had much of the Federal Government working in our basement. We had DOD; we had NSA; we had DHS; we had OMB. We had all the sorts of people, and that group really worked together effectively to address issues, to understand what they were, to communicate and to help us respond, and the power of that interagency response was terrific. And so we need to figure out how we can continue to leverage that. That was one of the reasons, as we went to think about the NBIB, we wanted to build on that experience to create the relationship we have created with DOD on the IT side.

So those are some of my lessons that I take away.

Mr. YODER. Thank you, Mr. Chairman.

Mr. CRENSHAW. Thank you.

Mr. Bishop.

Mr. BISHOP. Thank you very much, Mr. Chairman.

And welcome, again, Ms. Cobert.

Let me ask briefly about the replacement of the trust fund Federal financial service system. The trust fund Federal financial system is a 30-year-old system used to perform financial management

accounting for the retirement health benefits and life insurance programs which command assets over \$975 billion. Apparently, the existing system is no longer supported by the manufacturer, can't be migrated through OPM's infrastructure as a service platform, and it is not integrated with OPM's core financial system. Thus, you are requesting funds to move to a more modern financial management arrangement.

Could you discuss the components and the features of the new financial management system that will replace the FFS, and tell us about the timeline for the transition to the new system?

Ms. COBERT. Congressman, thank you.

The replacement of the system is a critical need, as you mentioned. We are currently operating on a system that is no longer supported by our vendor. We need to move that to a modern system that can be supported, and supported in a secure way.

So making that transition is important, and we need to find a way to do that and do that quickly. This is the first year of what will be a multiyear plan, roughly 3-year plan to get that done. We plan, to the extent we can, to leverage commercially available systems, other things that can do that well and do that efficiently, and leverage existing tools across the government in the commercial field that can do some of the functions, but this is a pretty unique set of requirements in terms of the nature of those systems, and that is why we need to get started on this now and make that investment over the next several years.

Mr. BISHOP. Thank you. One of your priority goals is to process 90 percent of your Federal retirement cases in 60 days or less. I understand that as of March of last year, 70 percent of the cases were processed in 60 days or less. What specific strategies will you implement toward utilization of the goal, and how are you working to streamline the process electronically?

Ms. COBERT. We have a number of strategies in place to continue to meet the target of 90 percent within 60 days, and we are making strides in that.

Mr. BISHOP. Let me just—

Ms. COBERT. Yes.

Mr. BISHOP. Add to that question, I have had a couple of employees who have retired, and they have been working with Federal employees and have been really frustrated in their efforts to get their retirement benefits started.

Ms. COBERT. Congressman, I share your frustration, and we are working on this.

We have a number of strategies that we are working on to make this happen.

The first is to make sure that we can, as the claims come in, and typically we get a big swell of claims in January and February, to figure out how we can, for example, staff up during those couple critical months of the year when the bulk of the retirement claims come in.

This year, we expanded a program that we had started last year to bring in detailees from DFAS, the Department of Defense Financial Accounting Systems, and from the Postal Service, who are the two biggest sources of claims. So we brought in detailees from those two agencies to help deal with this surge we get in January

and February. That both enables us to get those initial payments to people faster; it also creates a great training ground, so when those individuals go back to their day jobs and are preparing retirement claims before they get sent to OPM, they are much more knowledgeable about our systems; they can help coach their peers about how to have claims arrive more error free so that we can get through them faster. So we continue to look to educate agencies and educate retirees with fewer questions coming in.

We also, in the budget, have a request, as I mentioned, for \$1.5 million to help us staff up to answer inquiries. Even when we get things going, there are sometimes claims that have questions; we need to be able to reach out to individuals and get back to them. We need to answer your constituents' questions. We need staff that can answer the phone, answer email. We have added capability to enable people to make basic changes on their own. You can now change your address online; you can change your bank account online. But we still need to respond to emails and questions. So that is one of the reasons we are asking for the funding to increase staffing in 2017.

Mr. BISHOP. Thank you. I think my time has expired.

Mr. CRENSHAW. We will have time for another round of questions, but now let us turn to Mr. Quigley.

Mr. QUIGLEY. Thank you, Mr. Chairman.

Good afternoon.

Ms. COBERT. Good afternoon.

Mr. QUIGLEY. Thank you for your service.

My colleagues have taken two of my questions, but I still want to ask, according to OPM's latest figures, only about 34 percent of all Federal workers at the senior executive level are women, and only about 20 percent are minorities. So it seems as though while we have made progress over the years, we still have a way to go. What is OPM doing to promote more diversity at senior levels throughout the Federal Government?

Ms. COBERT. Congressman, we are continuing to work on this. We have work to do. There are a number of particular areas where we are working to improve diversity in the senior executive service.

A key element of this is getting more women and minorities into the feeder pools that create senior executive services, the career development programs. And we are working with agencies to help bring diversity to their programs, and make sure that they are reaching out to get those individuals in the program.

We heard the other day a terrific example from the Department of Agriculture, who has made a real effort, has made significant strides on this score. We are working with employee resource groups to create programs to pull people into these trainings so we have more people in the pool of folks that are ready. It is an issue that we are working on through the Council on Diversity and Inclusion. We are working with agencies on specific programs. We are working across agencies, because we know that we have more to do.

Mr. QUIGLEY. Is there a particular growth in recent years at one level or another? In other words, women versus minorities? Is one segment doing better or one lagging behind?

Ms. COBERT. They have all seen gradual increases, but we like to see it go up more. One of the challenges, you have to look at the pool of folks coming in, because the senior executive core itself is pretty stable. So unless you make progress with the new individuals joining the SES, it is hard to move the mass. And so that is why we are so focused, for example, on this issue of career development programs and diversifying those programs, because that is the pool that folks will come from, particularly as SES retire in coming years.

Mr. QUIGLEY. But the original pool is people we hire, and suspect if we are concerned about hiring minorities, is there more recruitment taking place at, for example, historically black colleges and universities?

Ms. COBERT. We have those kinds of programs. We do see greater representation at more junior levels than more senior levels. So it is a matter of keeping that and growing it as we go. But the pipeline, particularly, I looked at the women one the other day, a fair number at the more junior levels, but it tails off as you get more senior. So it is about keeping them in the pipeline for advancement.

Mr. QUIGLEY. Very good.

Thank you. I yield back.

Mr. CRENSHAW. Thank you. Let me ask you a couple of questions. We talked earlier about how you arrive at numbers like the \$21 million, the \$37 million, and the \$6 million. As I understand it, the OMB has—they have a requirement, they call it IT case justification or something like that. And I know I saw where the Inspector General said in one of those, I guess the Shell migration, which you mentioned, that they had not submitted that so-called business case to OMB. Is that the case? Has that been—was that—is that old news?

Ms. COBERT. Mr. Chairman, we have submitted an OMB Exhibit 300 this past fall as part of our budget submissions. In our work with them, we revised that based upon what we have learned from the experience in the breach and how that would have changed our plans. So we have done that. We have reviewed it with our IG. In my mind, when I think about this from my private sector experience, you need to have that plan, but you also need a process to continue to update that as you learn more, and that is what we expect to do.

The IT team meets with the IG on a regular basis, in fact, has a standing monthly meeting to talk about our progress and our plans overall. And we found that to be an effective way to have a dialogue with them as we go, and not just wait for reports to get their input on what we could be doing better.

Mr. CRENSHAW. But it makes sense that you just don't pull numbers out of the air. You sit down, try to write a plan, and come to us and say, this is what we need. So you are working on that, and we all understand that change from time to time. But you agree as an old management person, that is a good way to plan?

Ms. COBERT. I very much agree with you, Mr. Chairman. We need to have a plan, and then we need to review the plan. I know we also need to come back to this committee once a quarter to update you on our progress, and that is another good way of making

sure that we are being disciplined in how we deliver on our plan and adjust the plan if there are new facts. So we look forward to that part of the dialogue as well.

Mr. CRENSHAW. When we are talking about planning, I think it has been mentioned a couple of times this National Background Investigation Bureau. I mean, that is—at first glance, you say you are doing that now, but you are going to do away with an old agency and create a new agency that is going to be housed in your agency but funded and, I guess, worked on by DOD. At first glance, you say—who came up with that idea? I think that was the administration, wasn't it?

Ms. COBERT. It was the joint recommendation of the PAC and approved by the President's national security team.

Mr. CRENSHAW. I don't know, do you have a thought? Have you looked at that? I guess you have to say yes, it sounds workable. But doesn't it—I guess at first glance, people say, well, okay. You are making these background checks, but you are going to do away with that agency, and I guess that is a pretty significant change. I don't know how you do that. You create a new one, but you don't fund it; they fund it. The question is like, well, who is ultimately in charge of that? If it is a success, who gets to say, take a bow? And if it doesn't work out, whose fault is it?

I mean, there are a lot of unanswered questions. I know this is fast-moving, but talk a little bit about how you think this is going to work. Because I know we want to find out a little bit more. It took a while to sit down and give us a briefing, because I guess it is all new. But, again, some people would criticize us and say, well, this is just another way the government moves everything around and somehow it is all going to be better. Tell us a little bit about what you think is going to happen.

Ms. COBERT. Thank you, Mr. Chairman. Let me try and frame how we thought about this and why we do, and I believe that this is an effective, and really a good solution for us going forward.

We started the process with a fundamental examination of how do we make sure that we modernize the way we do background investigations? It is a critical function. And, how do we make sure that the data and the information system that supports that activity are secure? We needed to deal with both of those.

As we thought about what we needed to do, we wanted to create and build on the work that was in place to have an enterprise service provider that was really purpose-built for background investigations. That is what the NBIB is. And what it does is absorb the existing work of the Federal Investigative Service, and supplement it with additional specialized skills it needs to carry out its mission. Privacy is a core issue. Might need some specialized procurement services that are currently provided through OPM, but in a different way, have that all in one place.

What we then asked, and so we have this purpose-built entity, and its goal is to provide background investigation services for the full Federal Government; it is a government-wide services provider. OPM is a government-wide services provider. That mission is very akin to ours. When it came to the IT, what we looked and said, what is the best place, and what is the best way to provide IT services? DOD clearly has scale, expertise, tools on how to do IT in a

secure way when it is focused on a national security mission, so we wanted to leverage that capability. They also happen to be the largest customer of the NBIB. So they are now our core supplier as well as our largest customer.

There are many other examples in government of relying on agencies to provide an element of services. GSA is the landlord for the entire Federal Government in most places, because they have skills in being a landlord. The IT skills clearly we need from DOD are a specialized order, but we wanted to get them from there. And so we believe this does make sense, and I, as the Acting Director of OPM, am responsible for those operations. That is my responsibility.

Mr. CRENSHAW. And I sit on Defense Subcommittee, so, I guess, it will be part of our appropriations. But I think there will be a lot of questions about transparency, about accountability, and I know it is all being worked out. Maybe you could—I think this committee would appreciate if you give us kind of a monthly update, since it is brand new, tell us what is going on, how it is going, because I think this is one of those ideas that sounds great, but we want to see it kind of work out practically.

And the last comment I will make is down the road, I know DOD's going to provide some of the money to start with and then the agencies are going to, you know, have to pay for these. And so I can see some outyears where people are saying, gee, I didn't know it was going to cost this much. So a lot unanswered questions, but I appreciate what you are trying to do. Just keep us abreast. We appreciate that.

Mr. Serrano.

Mr. SERRANO. Thank you, Mr. Chairman.

To follow up, \$37 million requested for IT seems to mirror what the majority rejected last year. It will allow you to operate dual networks environments as you migrate systems from the old, less secure, to the new more secure environment. Why is this necessary, and how is it helping to protect the employee data?

Ms. COBERT. Congressman, we know that we fundamentally have to take what are many old, outdated legacy systems and put them into a new context. We put in place tools on those systems today that have increased the cybersecurity of those systems. We put in place tools around the perimeter of our network, but we fundamentally need to build in security by design.

To do that, we need to modernize many of these systems, and for many, it is a complicated task because the systems are large and complex, and the systems are outdated. So while we are moving those, we have to keep the old system running as well. So we have to have them running side by side. The goal in getting the funding, and in particular, getting no-year funding is to allow us to make that transition as efficiently, as effectively, and as quickly as possible. The sooner we get through this transition, the sooner we will be able to turn off the old legacy systems, not have to have the funding that supports that any longer, and to have the whole set of systems in a more secure environment.

Mr. SERRANO. I can't, again, stop telling you how important that is, and how, unfortunately, this situation has brought us all together. I say "unfortunately" because I wish we all got together on

a lot of other things that we don't. But this one is one that makes a lot of people nervous. It makes me nervous, makes all of us nervous. And it is not what our Federal employees should be expecting.

Your CIO recently retired. Who is acting in that role right now? And how far along are you in choosing her successor? What type of experience do you expect the person to have?

Ms. COBERT. Dave Vargas, who is a member of senior executive service in the CIO's office, he has been involved in much of the planning, for example, on the modernization, is currently our acting CIO. We are working to fill that position on a more permanent basis.

Your question about what I am looking for and what we will be looking for in that position, as we think about that, we are looking for a number of things: One, we need a strong and proven leader who understands both cybersecurity and modernizing IT systems. Those are very important skills.

We also need an individual who is very effective at building networks and collaborating across the government. We know we will need that for our work with DOD on NBIB. We are going to continue to need that with our work with DHS on improving our cybersecurity. So someone who can do that well.

I am looking for someone who is a disciplined leader of getting things done. We hope that we will have the opportunity to invest the \$37 million that we have requested in our fiscal year 2017 budget, and we want to make sure that we are spending that well.

So we have got a terrific team in the CIO's office. We have recently brought on board four highly experienced members of the senior executive service and four senior leaders, SL folks, as well. So we have a strong team. They have built a plan that they are working together on, and I know that they will continue to carry forward in a very thoughtful way while we are filling this position, but I also think we can bring in a terrific person that will continue to help them and build on the success.

Mr. SERRANO. And is it your intent to fill it as soon as possible, of course?

Ms. COBERT. Absolutely.

Mr. SERRANO. Okay. Despite Congress establishing a phased retirement back in 2012, a vast majority of agencies still have not yet fully implemented or made this offering available to interested employees. What can you do now to further encourage agencies to actually offer phased retirement? And I am not suggesting everybody should retire. I just want the information.

Ms. COBERT. OPM has continued to work with agencies to help put out the guidance to explain how phased retirement works. Now that we have that guidance, we serve as counsel to agencies, as they are thinking about the best way for their specific agencies to put this program in place.

In each case, they have a different set of circumstances, a different set of constraints about what they are looking for, and so our role is to provide them examples of the way to translate the guidance into their specific needs, to help provide counsel to connect them with other agencies who may be doing things. It isn't necessarily days, but we continue to have these discussions through the Chief Human Capital Officers Council and through other fo-

rum so we can make sure agencies are educated about the program, and then can make the decisions that each agency will make about how to implement it in their particular operation.

Mr. SERRANO. All right. That is my last question.

Thank you, Mr. Chairman.

Mr. CRENSHAW. Mr. Bishop.

Mr. BISHOP. Thank you very much, Mr. Chairman. My final question has to do with advanced methods of authentication. As the modern information security measures have evolved, the well-known, simple-username-plus-password combination is slowly being replaced with more secure methods in various contexts. Even my Galaxy S6 smartphone and Apple ID—Apple iPad, rather, can utilize biometric security through built-in fingerprint scanners.

In addition to the biometric security methods, multifactor authentication like short text code being sent to a preregistered mobile device for verification, is also a feasible option that would make it much harder for our sensitive systems to be infiltrated.

How much time and money would it take for OPM to transition to one of these more secure methods of user authentication or alternative method, if available, and what are the obstacles to implementation?

I am sure it won't be easy or inexpensive, but the cost to our country's national security and the privacy of the individuals that are directly affected would appear to be well worth the expense to protect our computer systems from outside threats.

Ms. COBERT. Congressman, using stronger authentication than username and password is absolutely a principle that we are committed to. We have achieved the goals of the cybersecurity sprint from last summer, about two-factor authentication to OPM networks. Everyone needs a PIV card as a form of that two-factor authentication now. That is in place.

We are working on having that same kind of two-factor authentication for all the applications inside the network, so that is another piece we are working on. So, I don't have the specific figures for that part of it. This is a piece of the overall modernization of our systems is to have those systems much more able, within the application layer, to do the kind of two-factor authentication that you are describing. But it is a fundamental principle. We have it in place for the network, and we will continue to look to put it in place for the rest of our systems at the application level.

Mr. BISHOP. Given the fact that all of our Federal agencies are being asked to do more with less, what is that going to do for productivity in terms of your workforce having to go through all of these additional steps in order to get access to even begin working?

Ms. COBERT. Congressman, as we move to change our operating practices, we can do it in a way that makes it simpler. When you come in in the morning, at least when I come in every day, I know I have to stick my card into my computer. That is now part of the process.

Again, as you modernize systems, it is easier to be able to do that in a way that becomes more timely or more part of the business flow. But, I think we are living in a world where we need to think about how we practice cybersecurity hygiene every day, and it is necessary, just like today, we will put on a seat belt when we

get in the car without thinking about it. I do remember when you didn't have to do that, and it seemed like a pain, but now it is just part of what we do. We don't even think any longer.

And I think, frankly, we have to get cybersecurity practices to be built into our daily habits in that same way.

Mr. BISHOP. Thank you very much.

Mr. CRENSHAW. Let me just—let me ask you, finally, just a couple of questions about the data breach. I know contacting 21 million people, it isn't easy to say just get in touch with those 21 million people. That is a pretty big undertaking. So I am just curious how many of those—have we tried to reach all 21 million of those people?

Ms. COBERT. Mr. Chairman, getting in touch with those people was a big undertaking. We were fortunate to partner with our colleagues at the Department of Defense in doing that. DFAS actually printed the letters and mailed the letters, so we worked very closely to get in touch with all those people. We decided to do—for the background investigation breach, to do it all by physical mail. It was more secure. It was the best way to get it done.

We worked to update address records through the Federal records, supplemented those with commercial addresses. I don't have the precise number, but it is well over 90 percent of people have gotten their letters, and I can get back to you with the number.

[The information follows:]

Ms. COBERT: In mid-December 2015, OPM completed its initial mailing of approximately 20,140,000 notification letters to individuals impacted by the background investigation records incident. OPM is working with the Department of Defense to process returned letters and the Department of Defense estimates that 2.9 million letters were returned.

We also put in place a verification center. So if you thought you should have received a letter and were concerned that you didn't get one, you could contact the vendor or go onto the Web site, and we would then go check and see, gee, you should have gotten a letter, here is your PIN to sign up for services. So we made an extensive effort to reach people. It was a lot of work, but I think it paid off in terms of our being able to get to people with the information they need so they are aware of the services that are being provided to them, and can sign up for credit monitoring and identity monitoring if they chose to.

Mr. CRENSHAW. I would say that is pretty successful. If 21 million people are out there somewhere in—through regular mail, you touched close to 90 percent of them, because I was going to ask you, what kind of—you get a lot of letters returned, address unknown, whatever, but it sounds like you pursued that. Are you still, that last 10 percent or so, are there are still efforts being made to—somewhere, I guess, you can't keep on forever, but what is the status when somebody isn't found, what happens, and how long do you try to reach them?

Ms. COBERT. The verification center is one of the methods we put in place for that, and so we did get some return mail and do some checks on them, but as you say, Mr. Chairman, that loop can go on.

One of the things we have done quite actively, particularly at the late part of the fall, was to continue, as the mailings wound down, was to reach out through the Federal employment network. So we had agencies, senior accountable officials who were helping us coordinate our response, and we sent out all employee emails multiple times to Federal agencies saying, If you have not received a letter and you think you should have received one, here is what you should do.

We worked where the Federal unions to get the word out to people. We worked with the contractor association. A significant number of people affected by the breach were cleared contractors, contractors who have security clearances. So we worked with the Association of Contractors so that we could reach people and say, If you think you should have received a letter and you didn't, here is what to do, and then we would then, when we—those folks would submit their information, a current address, we would send them back a letter that says either yes, you have been breached, here is what to do about that; or no, you have not been breached, but here is some good things you should do to protect your identity because we all should be out there protecting our identity.

Mr. CRENSHAW. Do they report that they are—that their identity had been stolen? I mean, do you keep track of that?

Ms. COBERT. We get weekly reports now. They used to be daily. We get weekly reports from the vendors about how many individuals have contacted them for identity restoration services, and so we are monitoring that situation. We also continue to—

Mr. CRENSHAW. You got any idea—like all that suite of services you offered, you got any idea, like, out of the 21 million people, what number or what percentage of people might have said we would like to take advantage of that offer?

Ms. COBERT. It is a very small number. We can get you the information. When an individual calls and says, I think my identity had been breached, we don't ask—we can't ask what was the source of that. We just take care of them. The vendor takes care of them. So some of those individuals could have had their information taken in another context, but we do maintain an ongoing dialogue with the FBI, with the IC, and others to see if there are any broader trends in, you know, information so that we are aware—

[The information follows:]

Ms. COBERT: As of March 31, 2016, approximately 25 percent of individuals impacted by the personnel records incident and approximately 11 percent of individuals impacted by the background investigations incident have also signed up for credit and identity theft monitoring services. It is OPM's understanding that the average enrollment rate for a similar sized breach industry-wide is approximately 3.5 percent.

Mr. CRENSHAW. So not a lot of people have reported theft, et cetera, and not a lot of people have said we would like some of those protections. They have been offered those, but like, for instance, you can't put a number in terms of dollars what it might have cost in the last half a year, you know, what you expect?

Ms. COBERT. Mr. Chairman, the way the services are structured, if your information was taken in the breach, you are automatically enrolled in identity restoration, in identity theft insurance. You

could contact us at any time, and if you are covered, those services will be put to work.

To monitor your identity, you actually have to provide the vendor with your information, with your Social Security number, so you have to choose to do that. So everyone is covered. About 11 percent have chosen to take advantage of the monitoring services.

Mr. CRENSHAW. Do we know how much that cost?

Ms. COBERT. The contract for the whole suite cost roughly around—and again, we can get you specifics.

[The information follows:]

Ms. COBERT: OPM expects the costs to be \$138M in FY16 for services to individuals impacted by both the personnel records and background investigations breaches. In FY17 we estimate the amount will be approximately \$90M, though this number has not yet been finalized. In FY18, we expect it to be similar or slightly less.

Mr. CRENSHAW. Yeah, I am just curious.

Ms. COBERT. \$140 million in the first year, it should be closer to \$100 million in the second year. There is no setup cost in the second year. Everybody is enrolled. So it is sort of around that order of magnitude that was paid for through agency contributions to the revolving fund.

Mr. CRENSHAW. And do we know how long that is going to be offered?

Ms. COBERT. It will now be offered for 10 years based upon the provisions in the omnibus, so we will find a way to extend coverage. The maximum coverage is 3 years. According to the provisions in the omnibus, we need to extend that to 10 years, and we are in the process of figuring out the best way to do that.

Mr. CRENSHAW. Does it sound like it is going down year to year? I mean, no way to know, but the first couple of years?

Ms. COBERT. We would expect that, but we are not sure, and part of the process for competing the next round of services, we would have to work that through.

Mr. CRENSHAW. Got you. Do any other members have any questions? Comments?

Well, again, thank you for being here today. Thank you for the work that you do. I know it is a big job. The whole modernization, I think your agency is really one of those agencies where IT is so important, and I think, in terms of what Mr. Bishop said, that I think that is an area where, as you said, when you go down and everybody is sitting in the basement, you know, turning papers as we get more used to using all the modern equipment, then we can do things much, much more efficiently, and thank you for the efforts you are making to do that, and thank you for your service.

This committee—

Ms. COBERT. And thank you for your support.

Mr. CRENSHAW [continuing]. Is adjourned.

**Financial Services and General Government Subcommittee
Hearing on the Office of Personnel Management
for Acting Director Beth F. Cobert**

Questions for the Record Submitted by Chairman Ander Crenshaw

Data Breach

During the last quarter of 2015, OPM reached out to those impacted by the data breach. Approximately 21 million people were affected by the data breaches and received notifications about the breach and available credit monitoring services.

Question: Did OPM complete notification mailings to all 21.5 million individuals?

In mid-December 2015, OPM completed its initial mailing of approximately 20,140,000 notification letters to individuals impacted by the background investigation records incident. In addition, OPM has partnered with the Department of Defense to set up a verification center to assist those who have not received a notification letter but believe they may have been impacted. As of April 8, 2016, OPM has mailed approximately 120,000 letters to individuals who contacted the Verification Center.

Question: And of this number, how many letters were returned because the recipient was no longer at the address on file?

OPM used government and commercial sources to locate the best address for impacted individuals. OPM is working with the Department of Defense to process returned letters and the Department of Defense estimates that 2.9 million letters were returned.

Question: What attempts are being made to contact these individuals?

OPM is working with the Department of Defense to resend notification letters to impacted individuals whose addresses were initially supplied by a government source. OPM is utilizing commercial address validation services to secure better mailing addresses and resend notification letters to impacted individuals.

In addition, OPM has partnered with the Department of Defense to set up a verification center to assist those who have not received a notification letter but believe they may have been impacted. As of April 8, 2016, OPM has mailed approximately 120,000 letters to individuals who contacted the Verification Center. OPM continues to engage with other agencies, union organizations, contractor associations, and other stakeholders to encourage those who believe they may have impacted to reach out to the Verification Center.

Question: How many people have registered for identify theft protection?

All individuals impacted by either incident are eligible for identity restoration and identity theft insurance services. As of March 31, 2016, approximately 25 percent of individuals impacted by the personnel records incident and approximately 11 percent of individuals impacted by the background investigations incident have also signed up for credit and identity theft monitoring services. It is OPM's understanding that the average enrollment rate for a similar sized breach industry-wide is approximately 3.5 percent.

Question: Of those who registered for identity theft protection, how many claims have been filed to date?

Approximately 1,078,717 individuals have enrolled in services provided following the personnel records incident. Of those, 1,221 have opened identity theft recovery cases. With respect to the services provided following the background investigations incident, as of March 31, 2016, 2,580 identity restoration cases have been resolved and there are 2,923 open identity restoration cases. Individuals are eligible to receive identity theft restoration services regardless of whether the identity theft is related to or traceable to the OPM breach.

Question: Of those who filed claims, how many claims have been paid how much in total, and what is the average cost per claim?

There have been two identity theft insurance claims filed in connection with the personnel records incident. Neither of the claims has been paid out due to the fact that the discovery of fraud was well prior to the effective date of the policy. No insurance claims have been filed with respect to the background investigations incident.

Question: What are the out year, year-by-year costs associated with the suite of credit monitoring services offered? And are these costs being paid from appropriated funds or trust funds?

OPM expects the costs to be \$138M in FY16 for services to individuals impacted by both the personnel records and background investigations breaches. In FY17 we estimate the amount will be approximately \$90M, though this number has not yet been finalized. In FY18, we expect it to be similar or slightly less. Costs for providing services for the background investigations incident are shared across agencies through payments to OPM's Revolving Fund. Costs for providing services for the personnel records incident have been shared between OPM and the Department of the Interior. As part of the Consolidated Appropriations Act of 2016, section 632, OPM has been directed to provide identity protection coverage to individuals affected by either the personnel files or background investigation records incidents for 10 years. OPM has also been directed to increase the identity theft insurance to \$5 million. OPM is fully committed to providing these services and is working through the details on how we will implement the new law. As a result, the out-year costs are not yet fully known, but should be known by later this Fall

As a result of the Bipartisan Budget Act of 2015, OPM and the Social Security Administration (SSA) are required to develop a system to improve coordination of the Federal Employees Retirement System and the Social Security's Disability benefits to reduce improper payments. As directed by law, OPM is required to pay for this system. OPM's fiscal year 2017 request includes \$6 million to help build a system to coordinate the reduction of these improper disability payments.

Question: Please provide the methodology and assumptions used by OPM to develop the \$6 million cost estimate.

The provisions of 1127A of the Social Security Act require OPM to pay the Social Security Administration (SSA) "the amount estimated by the Commissioner [of SSA]...the total cost incurred by [SSA] in carrying out [section 1127A of the Social Security Act] for each calendar quarter." OPM's FY2017 budget request is based on SSA's current estimate of its initial costs in carrying out this law. SSA's estimate includes its costs for business process development, coordination of a data matching agreement, system updates, and ongoing estimated costs, such as performing the data match, withholding required deductions, and transmitting a portion of the past-due Social Security benefit to OPM so that OPM can apply this amount to the annuitant's FERS disability annuity overpayment (incurred as a result of SSA's determination that the annuitant is retroactively entitled to Social Security benefits and OPM's payment of an unreduced FERS disability annuity during this retroactive period).

This activity is not currently authorized as an administrative expense that can be paid from the Civil Service Retirement and Disability Fund (CSRDF) under section 8348(a)(1)(B) of title 5, United States Code; therefore, it must be paid out of annual transfers subject to Congressional limitation per section 8348(a)(2) of title 5, United States Code.

Question: Is this a current estimate of what is needed to create the system?

Yes. OPM's FY2017 request is based on SSA's current estimate for its initial costs in carrying out this law. Again, it is important to note that the requested amount includes SSA's costs for business process development, coordination of a data matching agreement, system updates, and ongoing estimated costs, such as performing the data match, withholding required deductions, and transmitting a portion of the past-due SSA benefit otherwise payable to an annuitant to OPM so that it can apply this amount to the annuitant's FERS disability annuity overpayment.

Question: Does the OPM expect this amount to increase in the out-years to coordinate the disability overpayments?

The request for \$6 million in no-year funds represents the initial costs SSA has currently estimated it will need to implement the law. This includes SSA's costs for business process development, the coordination of a data matching agreement, and system updates. Costs will be ongoing in future years because OPM is required by the law to reimburse SSA for its estimated costs in implementing the law (e.g., performing the data match, withholding

required deductions, and transmitting a portion of the past-due SSA benefit otherwise payable to the annuitant to OPM for the purpose of applying this amount to the annuitants' FERS disability annuity overpayment).

The FY15 and FY16 President's budget request for the SSA, Limitation on Administrative Expenses (Legislative proposal) also included \$6 million for "system implementation costs... to automate coordination of disability benefit payments between OPM and SSA."

Question: Why is OPM's FY17 budget request identical to SSA's FY15 and FY16 budget requests? As the program manager responsible for requesting funding and accountable for implementing the system changes in a cost-effective manner, did OPM develop a budget request for this program anew or adopt estimates produced by a different agency in 2014?

OPM incorporated the estimates produced by SSA into the FY 2017 budget request in accordance with the law. The law requires OPM to pay SSA "the amount estimated by the Commissioner [of SSA]...the total cost incurred by [SSA] in carrying out [section 1127A of the Social Security Act] for each calendar quarter." Accordingly, OPM's FY2017 budget request is based on SSA's current estimate of its initial costs in carrying out this law.

TUESDAY, MARCH 15, 2016.

FEDERAL COMMUNICATIONS COMMISSION

WITNESSES

HON. TOM WHEELER, CHAIRMAN, FEDERAL COMMUNICATIONS COMMISSION

HON. AJIT PAI, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION

Mr. CRENSHAW. This hearing will come to order. We just finished a vote, and so people will be coming from the floor, and we will have another vote, right around 4:00, but I think we will have time to get most of our work done.

So let me start by welcoming our witnesses, Chairman Tom Wheeler and Commissioner Ajit Pai from the Federal Communications Commission. This is your third time together before the committee, and I appreciate your willingness to testify. Welcome to you both, thanks for being here today.

The focus of today's hearing is the FCC's Fiscal Year 2017 budget request. Although, like me, I am sure our subcommittee members will have other policy items to discuss, let's start with the Commission's funding. The Commission has requested a total of \$358 million for fiscal year 2017.

However, the Commission is yet again requesting a transfer of non-appropriated funding from the Universal Service Fund of \$9.5 million. So in total resources, the Commission is requesting \$368 million for 2017, which by all appearances looks like a decrease of \$25.7 million, or a 7 percent decrease from last year.

However, most of the decrease is because the remaining cost of the Commission's headquarters move are about one-third of last year's cost. Excluding the moving costs, the Commission is requesting an \$11 million increase in salaries and expenses. And while the FCC is fee-funded, these fees are directly passed on to the consumers. Anyone who has a phone can see these fees in their monthly bill.

For this reason, I believe the costs of the FCC's operations are closely felt by consumers, and warrant close scrutiny by this committee and this Congress. This committee has held the FCC's operating level flat since fiscal year 2012 because we believe the Commission can and should do less with less. I believe the regulatory system works best when we can encourage innovation in the free market, so that the costs to consumers stay as low as possible. The greater the amount of competition, the less need for regulation.

It seems, however, that for the past few years, the Commission has been putting forward solutions that do not always address a problem.

Last year, this committee tried to codify what you, Chairman Wheeler, had stated publicly and repeatedly, that the Commission

would not regulate rates for broadband service. We agree with you. We thought codifying this was a reasonable way to go, and would give some certainty to the market. My thinking was: if you say you are not going to regulate rates, then why not write it down?

However, when we reached out to your office for technical assistance in writing the language, we hit a brick wall. This was both surprising and disappointing. I will have a few questions for both of you on this, and I understand our friends at the Energy and Commerce Committee marked up a bill today on this very topic.

On a similar note, I thought the committee took a reasonable approach to the Commission's Open Internet Order. Last year, this committee included a legislative stay in our bill requiring the courts to determine the legality of the rule before it was implemented.

A decision by the courts may be handed down any day now, and I know we will all be looking closely at the verdict. However, I believe both the Commission and the industry feel certain of an appeal by one side or the other and, therefore, this committee maintains a position that a legislative stay is necessary until the courts have their final say.

We are also looking forward to seeing how the upcoming incentive auction goes. The EWS auction at the end of 2014 was one for the record books, just over \$41 billion in revenue, and we expect the upcoming incentive auction to generate billions in dollars for deficit reduction. My understanding is the incentive auction will end within this current year, so I am interested to hear why the Commission thinks it needs an addition \$7 million, or \$124 million total, for the administration of the auctions in 2017.

The fiscal year 2016 omnibus included language grandfathering the existing joint sales agreements, the so-called JSAs, for 10 years. These are agreements between broadcast TV stations in the same market who share advertising and other resources. The committee believes these agreements allow TV stations to better serve viewers in smaller markets, and ensure that these communities continue to have access to numerous free local programming options.

However, Chairman Wheeler, I am hearing concerns from my broadcasters in my district, regarding the Commission's recent actions relating to JSAs, so I will have a question or two about that as well.

And finally, I know last Thursday the Commission proposed consumer privacy rules for Internet service providers. Many have expressed concern that these rules would not harmonize with the regulatory privacy framework that is already in place. I look forward to hearing from you both on your thoughts on how you think the FCC should best move forward in this area. I am eager to hear from both of you about your thoughts on the future of the Commission. The FCC has significant work to do, and I hope that we can talk today about how this agency can operate more efficiently and more effectively.

So thank you both for the work that you do, and your staff, and I look forward to your testimony. Now I would like to turn to my ranking member, Mr. Serrano, for an opening statement.

Mr. SERRANO. Thank you, Mr. Chairman. I would like to join you in welcoming Chairman Wheeler and Commissioner Pai back before the subcommittee. This is the third year we have had this dynamic duo, with all due respect to Batman and Robin, before our subcommittee, and I am sure we will continue to have a stimulating discussion on the many issues facing the Federal Communications Commission.

Last year, the FCC was a central point of debate on this committee for both numerous funding and policy issues. The end result is that the omnibus removed several controversial riders and significantly increased funding for the agency for the first time in several years. This year, your budget request is for \$358 million in funding, which is 6.7 percent less than the fiscal year 2016.

The reason for this decrease is that we were able to largely fund your efforts, to save costs in the long-term, by transitioning to a location with a smaller footprint. I look forward to discussing how these plans are going, and how this year's request builds upon last year's funding.

It should come as no surprise that members often take this opportunity to discuss issues that move beyond the budget request. In fact, last year's hearing was devoted almost exclusively to the one topic, the FCC's Open Internet Rule. We recently celebrated the first anniversary of that rule, and I think that it is safe to say that it has been a rousing success. None of the fears that opponents of the rule advanced in the lead-up to its implementation have come to pass. There has been increased investment, continued expansion, and increased profits for Internet service providers. I believe that this is a settled issue. Net neutrality is good for consumers, good for innovators, and ultimately good for business. Although I do not doubt that we will have some more discussion on it today, I think it is important to recognize the positive impact these rules have already had.

Beyond net neutrality, the FCC is dealing with numerous issues important to consumers. Local businesses and all that affect our constituents. From privacy to expanding the Lifeline program to include broadband, to opening up the set-top box market, I commend the FCC for taking an active role to better the lives of those we have been elected to represent. I hope that we all keep consumers foremost in our minds as we discuss these issues going forward today. Thank you, Mr. Chairman.

Mr. CRENSHAW. Thank you. Now I would like to recognize Chairman Wheeler, for his opening statement. If you could keep that in the neighborhood of five minutes. Your full remarks will be made part of the permanent record.

Mr. WHEELER. Thank you very much, Mr. Chairman, Mr. Serrano, members of the committee. There is attached to my statement a set of Power Point slides, that we can run through, and I will try and truncate as much as possible to save time here. The executive summary on the first slide shows, as you point out, Mr. Chairman, we are down \$26 million from last year, which as you say is principally as a result of the move reduction.

[Slide]

We have the fewest FTEs in the last 30 years. We have had essentially a flat budget since 2010. The IT investments that you

have authorized us to make are paying off, and I will talk a little bit about that in a minute. And you referenced the pay-go for universal service. We have heard clearly from Congress your concerns about waste, fraud, and abuse in that program.

I will review that in a little more detail shortly, but the bottom line is that there needs to be a police force, and that police force should be paid for by those that they are protecting, not by broadcasters and others, and that is our proposal.

Slide 2 is a quick overview where, on the left, you can see the base budget frozen.

[Slide]

On the right you can see FTEs at their lowest level. And as you said, Mr. Chairman, these are all non-tax dollars.

But let's get to the meat of the proposal here on Slide 3.

[Slide]

This is a waterfall chart that starts on the left with last year's budget, ends up on the right with what we are proposing for this year, and shows the major changes throughout. So let's just walk left to right. There is \$4 million for salary inflation and contract increases that are beyond our control. There is \$5 million for moving legacy apps to the cloud, which is the next logical step of what you have funded us to do in the past. There is \$2 million for a protective analytic software package that allows us to catch inappropriate USF claims, and I will talk more about that in a second. And then there is roughly \$10 million funding from the Universal Service Fund to police the USF, and we will have more on that in a minute.

But a question arises here, obviously. If that pay-go component is not adopted, then there is a \$10 million shortfall on the budget. And since most of our expenses are fixed, we have limited options in terms of where our variable expenses could be cut.

So what are the kind of variable expenses that we are talking about, beyond USF enforcement? And they are listed on the right side, here. Field reinvestment, we have got out-of-date equipment in our field offices, we are modernizing our field offices, we need new equipment for the new challenges. We need to improve our public safety systems. We are the only repository for information on what is happening on networks.

If you want to apply big data to cyber challenges, if you want to apply big data to what is happening with public safety, et cetera, we are the only folks, and we need to modernize those systems. We need to reduce the burdens for broadcasters and mobile operators in their licensing systems, with new systems there. We need to make our public filing process more transparent.

And to add a couple of other things that are not on your chart, we need mapping tools for rural programs. We are going to be moving into a Mobility Fund Two that will deliver broadband into unserved areas, and then an auction to deliver fixed broadband into unserved areas. We have to be able to map to those areas, and current capabilities are inadequate to do that. We need to reduce the burden on those who are seeking equipment authorization by giving them new automated systems. And lastly, our report from FISMA on our cyber exposure says that we are halfway there. We have got to get the rest of the way there.

So those are the base fees that we are talking about. If you go to the auction page, which is page four, and do a similar kind of read from left to right, we are looking at a \$3 million decrease in the broadcast administrator that you appropriated last year because that has been done and paid for. There is about \$1 million attributable to auctions that are, again, beyond our control. There is a \$5 million number here for current auctions. That is apparently confusing to some, and let me be a little more specific about that.

The incentive auction, which starts two weeks from today, is not the only auction that we are going to be running. We have got to run a 3.5 GHz auction, which is going to be about a half a million licenses re-auctioned every three years. We have the re-auction of the AWS-3 that you referenced, Mr. Chairman.

We have reclaimed some of those licenses, and we have to re-auction them. We have got an FM radio auction that we have to run, we have got an FM translator auction we have to run. We have got the Connect America Fund Unserved Areas auction that we have to run. Those costs are frankly greater than the \$5 million number that you see here. But again, we have been able to move things around to make sure that we can do all of this.

The next number here is a \$4 million software modernization. We did that software modernization in the auction for the incentive auction, but we have not been able to do it for the other auctions. And then lastly is the Spectrum Pipeline Act that you all passed at the end of the last Congress; and we will be spending \$4 million to raise what has been booked in the budget as \$4 billion. What is this, why cannot this be done, and just, you know, fold it into the cracks? Here we are talking about custom analysis of spectrum, and how various blocks of spectrum overlap with each other, how that can be mitigated, and how that can open up the spectrum blocks that you have instructed us to go find. It is a non-trivial undertaking, and again, it is something that you mandated us to do.

In the middle of that chart are the kind of deliverables that come out of this. But here's an important point, and you raised this, Mr. Chairman, so let me answer it directly.

[Chart]

If the incentive auction is coming to a close, why in the world do we need more money? It is a very legitimate question. And the answer to it, and I do not mean to be flip, is that the incentive auction is not coming to a close. The gavel may come down on the bidding part, which will probably happen sometime in early fiscal year 2017, but the work just begins then. The bidding is the easy part.

There are about 2,200 broadcast television licensees in the United States. Every one that remains will have to be repacked, may involve new channel numbers, new location of their antennas, and somebody is going to have to oversee and coordinate that. Interesting, in one of today's trades—yes?

Mr. CRENSHAW. We are running out of time. If you could wrap that up, we can talk about that some other time.

Mr. WHEELER. Okay, talk about that in specifics, sure. Then I will explain. Well, let me go back here. If we cannot deliver on this second part, which is scheduled to last 39 months, and which the broadcasters say is not enough time, and we say we think it is—

but we guarantee it is not, if we do not have the necessary resources. And that is what we are asking for, are those necessary resources.

It is also equally important to the wireless industry, because they have to get access to that spectrum, so they can begin offering services. So the heavy lifting: it is been a non-trivial activity to get to this point, but when the gavel falls, we need to make sure that we all recognize that that is just the beginning of this exercise.

Mr. CRENSHAW. Okay, okay. We will finish that up.

Mr. WHEELER. We can talk on about the budget and the other stuff. I am happy to.

[The statement of Mr. Wheeler follows:]

**Statement of
Chairman Tom Wheeler
Federal Communications Commission**

Hearing on the FCC's Fiscal Year 2017 Budget Request

**Before the
Subcommittee on Financial Services and General Government
Committee on Appropriations
U.S. House of Representatives**

March 15, 2016

Chairman Crenshaw, Ranking Member Serrano, and members of the Financial Services and General Government Subcommittee, thank you for inviting me here to present the Federal Communications Commission's Fiscal Year (FY) 2017 Budget Request. Our proposal demonstrates the Commission's successful efforts to keep costs down, while maximizing and leveraging resources to benefit consumers and industry. This budget asks for less than the previous year's appropriated amount and once again provides more in management efficiencies.

Last year, the Commission asked for \$388,000,000 in general spending authority derived from Section 9 regulatory fees for our overall non-auction costs, an auctions cap of \$117,000,000, and a \$25,000,000 transfer from the Universal Service Fund (USF) to oversee that program's general operations. You responded by providing \$384,012,497 overall with \$44,168,497 of that number in directed spending to initiate our FCC headquarters footprint reduction. That left \$339,844,000 for regular spending. You also granted our requested \$117,000,000 for the auctions cap, but you did not provide the USF transfer.

We have initiated the facilities process as a result of the directed funding and we expect to forge ahead with the footprint reduction as soon as GSA awards the lease. We appreciate this Committee's support for this important process and expect that the footprint reduction will save \$119 million over the life of the next lease.

During the past year, you also provided us with reprogramming and reorganizing authority to consolidate our Enforcement Bureau. We also received a reprogramming request to use unobligated funds to support our IT server move to a secure facility off-site from the FCC headquarters location. The Enforcement Bureau consolidation is well underway and we completed the server move in September.

For the past seven years, general funding for the Commission has been between \$336 and \$339.8 million, with an additional reduction of \$17 million due to the 2013 sequestration. The Commission's auction cap was stagnant at \$85,000,000 for nine years until we received increases starting in 2013 to fund the Incentive Auctions process. Most of the Commission's

increased costs have been associated with inflationary adjustments and mandated pay raises. Calculating the flat funding levels in light of inflation and sequestration impacts shows that we have experienced reductions in our purchasing power. Accordingly, we have seen significant staffing reductions. The FCC's FTE level has dropped from 1,775 in 2010 to a projected 1,650 in FY 2017, the lowest level in more than 30 years. We also have reduced our contractors by more than one-half during the same period.

The FY 2017 budget requests a total of \$358,286,000 derived from section 9 regulatory fees, a \$9,500,000 transfer from the USF to pay for the costs of reducing improper payments and enforcing that \$8.3 billion program, and a \$7,000,000 increase in the Spectrum Cap to \$124,000,000. Of the \$358,286,000 number, \$16,866,992 will be directed to complete the facilities leasing process and footprint reduction. Overall, the FY 2017 request is \$25,726,497 less than our FY 2016 appropriated level of \$384,012,497, if you allow the requested USF transfer amount. If you decide against transferring the USF funds again this year, we would be underfunded from the onset by \$9.5 million.

I am attaching a series of slides to illustrate in greater detail the Commission's resource needs, management objectives and spending process, all of which I plan to discuss with you during my oral testimony. These slides also provide a clear outline of projected funds raised, money spent, and programmatic goals. They illustrate in detail the administrative and funding issues that we have faced, while providing a positive picture of how many of our investments are paying off.

One area of progress that I wanted to highlight is our work to improve the FCC's efficiency and effectiveness. I am pleased to report that more than 77 of the 154 recommendations of the Commission's 2014 Process Reform Working Group have been fully implemented and most of the remainder are being implemented. Many of these reforms are related to operational improvements that this Subcommittee supports – enhanced transparency, greater public access, streamlined processes, cost savings measures, better employee training, and overall, more efficient use of the resources that you give us to carry out our routine mission objectives.

In many places where we made reform investments, we have seen phenomenal success. The sixth slide in the attachment lists seven of these IT success stories. A July, 2015 article in *Forbes* detailed how one of these – the new FCC Consumer Complaint System – saved the writer \$1,800 after a short investment of online time. And of course, we saved *all* taxpayers additional funds by avoiding expensive contractor costs and purchasing an off-the-shelf system to stand-up this new consumer system.

Those who use our systems on a routine basis also have praised our work. On February 24, 2016, the President of the Federal Communications Bar Association wrote the Commission on behalf of the lawyers who use our systems to thank us for improving and updating our website. While work continues to improve FCC.gov, users can navigate with less effort, saving time and resources.

Our funding levels have an impact on our process reform success rate and we must constantly review our resources and prioritize between mission objectives based on costs. The Commission requested additional funds for some reform projects, especially with regard to our Information Technology operations. Although we did not receive these funds, we did not throw in the towel – we made tough cost cutting decisions and moved ahead.

One such decision was the consolidation of our Enforcement Bureau facilities nationwide – done only after careful study, significant stakeholder input, and a full Commission vote. With your permission, we reorganized these offices to better focus on their primary responsibility – enforcement of the Commission’s rules governing radiofrequency interference – while maximizing the efficient use of our resources. This process has already saved more than \$400,000, and we are on track to save an additional \$220,000 per month. Once the other elements of the consolidation plan go into effect, we should save between \$8-9 million per year. These cost savings will allow us to make essential upgrades to our field investigative equipment, and enhance the complaint intake and database systems. In the meantime, we have continued to improve our support for public safety entities, and we have attacked pirates in high-volume areas like New York where we have the most significant number of violations.

The server ‘lift and shift’ is another good example of our flexibility in re-assigning funds to mission-critical objectives. We had been saddled with over 200 legacy systems, many of which were in disrepair. After receiving reprogramming permission, we retired approximately 70 servers and moved more than 120 to a new location in September. At the same time, we were unable to convince you to provide us with \$3 million per year to cover the ongoing maintenance and updates of our broadband map. Our solution was to go back to the drawing board and find a much cheaper option. That is why we dropped the FY 2016 request in FY 2017 and instead opted for a less expensive commercial product – a more adaptable Geospatial Mapping System that will support the 350,000 individual users per year who access the FCC Maps page.

When we ask for IT funds, as we are in the current fiscal year, we do so only after exhausting all available resources, closely examining the least expensive options, and finding the best return for the taxpayers and those we regulate. In FY 2017, we hope to take another step toward completing our projected IT modernization efforts, rewriting additional legacy applications to a resilient cloud-based platform. With regard to individual IT projects, we are focused in the current fiscal year on systems that support essential services and public safety, such as the Universal Licensing System, the Network Outage Reporting Systems and the Disaster Reporting system. With your help in the next fiscal year, we will modernize and upgrade other important systems, including our Consolidated Database System and Equipment Authorization System, among others. We will hit the most critical systems first and ask that you support our efforts to ensure that America’s communications industry has the fastest, most efficient, reliable and secure access to emergency notification systems and licensing programs available.

These improvements and upgrades represent expenditures. But the Commission also generates revenue, most notably through our management of commercial spectrum. Setting aside the money raised at auction, making spectrum available for wireless use helps spur significant economic growth and job creation.

The auctions cap increase has unquestionably been one of your wisest investments – and one that your children, grandchildren and great grandchildren will appreciate. Before 2013, the Commission endured nine years of auctions caps at \$85 million – no inflationary adjustments, no funds for improving the operational efficiencies or resiliency of our IT systems, and no money to study new projects to support auctions programming. You changed that to ensure funding that supports auctions – and now we are asking you again for a modest increase.

The infusion of additional funds since 2013 has supported our efforts to bring in over \$42 billion to the Treasury in two major auctions. But most importantly, your permission to use additional auctions funds has supported our efforts to develop and prepare for the first-ever Incentive Auction, which is slated to launch this month. This process has involved highly skilled, technologically savvy FTEs and contractors, across multiple disciplines, including cutting-edge economics and engineering. It also has involved the development of essential and resilient IT systems to support this program.

To ensure preservation of service for broadcast viewers and timely network deployment, we have been focused on post-auction planning for over a year, including the release of the draft relocation reimbursement form and a reimbursement cost catalog, and we have already begun to pivot and to accelerate our planning for the post-auction transition. Like the auction, the transition will be a complex effort spanning several years. So we will continue to experience costs associated with the Incentive Auctions into the next fiscal year and beyond. But I have no doubt that the money spent in this effort will yield important dividends – financially for the Treasury, and for industry growth supported by freed-up commercial spectrum.

Also, since I testified last year, the Commission has been asked to do even more to promote spectrum resources. The Bipartisan Budget Act of 2015 not only extended our auction authority but it mandated that we work with other agencies to identify and develop resources for a “spectrum pipeline.” In addition to the Incentive Auction and other innovative auctions on our planning list, we will be expending resources to support the core goals of the new legislation. To do so, we need to upgrade our traditional and aging auction IT systems – the ones that were not upgraded during the pre-2013 years – for use into the next decade, and engage in a broad range of economic and engineering studies to ensure that the next generation of auctions are at least as successful as past auctions.

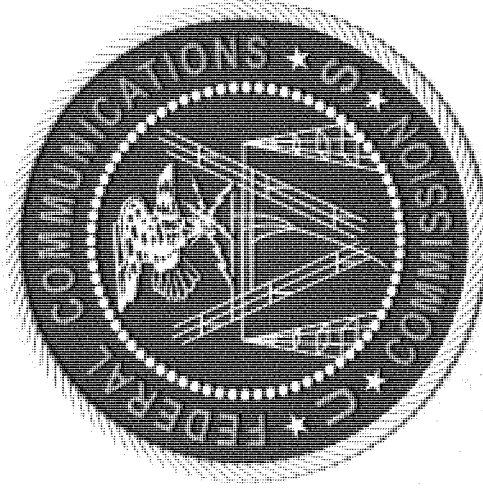
Conclusion

The Federal Communications Commission’s mission to maximize the benefits of communications technology for the American people helps to grow our economy, expand opportunity, and boost U.S. competitiveness. With appropriate funding, we can achieve Congress’ varied mandates and do so in a fiscally sound manner.

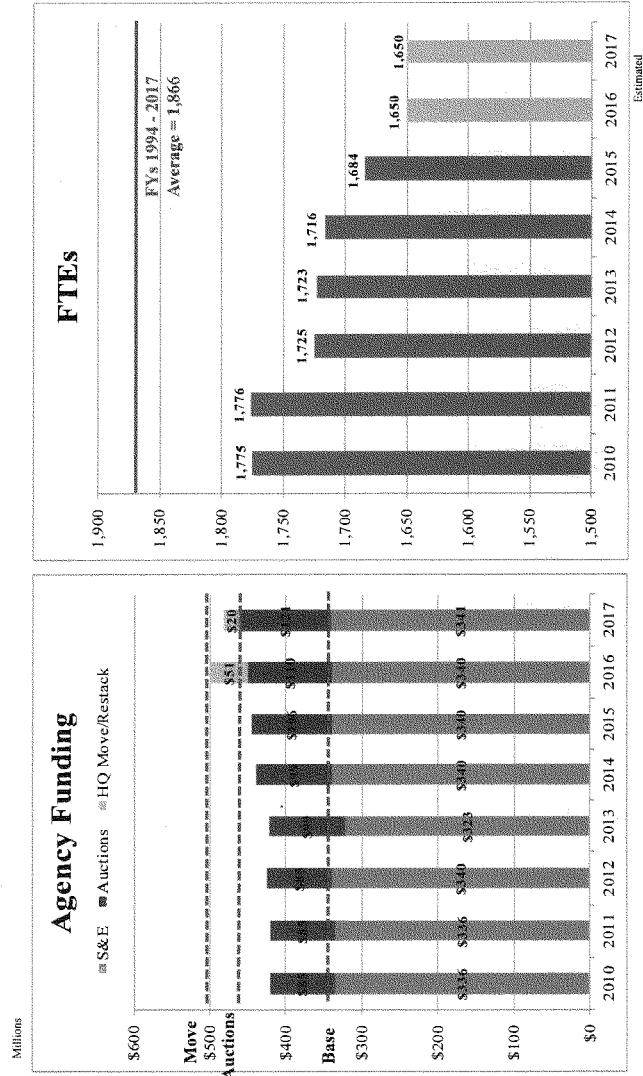
I appreciate this Subcommittee’s attention to the Commission’s funding for the next fiscal year, and I look forward to answering your questions. Thank you.

Executive Summary

- Down \$26m from FY 2016
- Fewest FTEs in over 30 Years
- Flat Base Budget Since 2010
- IT Investments Paying Off
- Pay-Go for Universal Service Fund Oversight



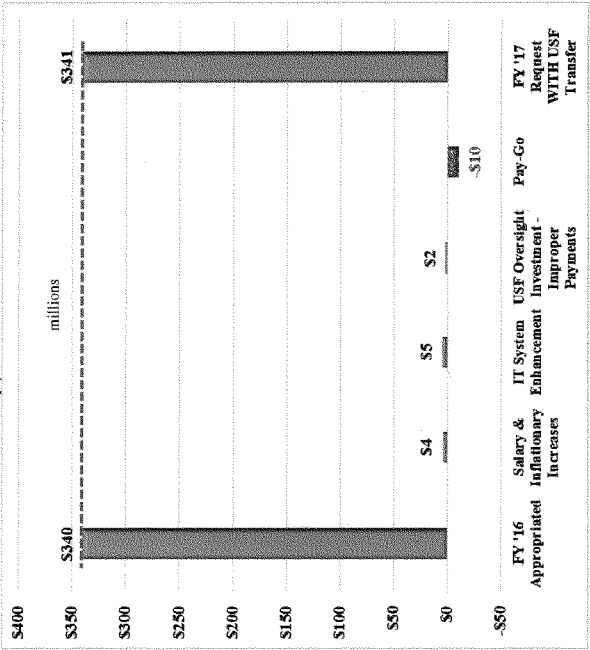
Funding Without Move/Restack, Flat Since 2010 - FTEs At Historic Lows



Regulatory Fees (Offsetting Collections)

Comparison to FY '16 Appropriation

Excluding Move/Restack Cost



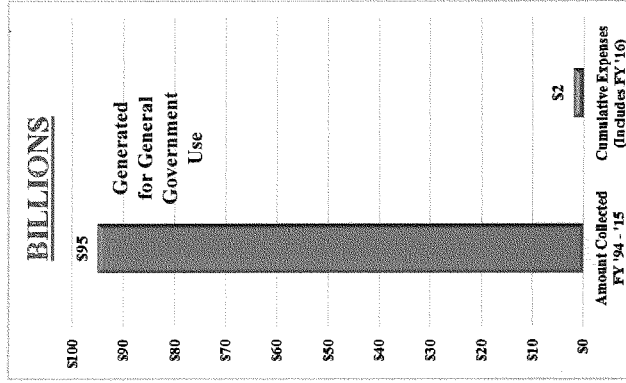
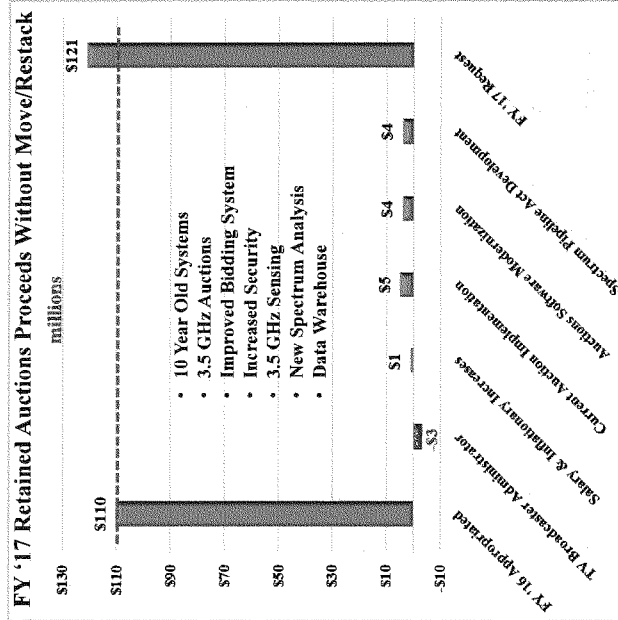
- Doing MORE

Without Increases

 - Field Reinvestment
 - Public Safety Systems
 - Licensing Systems
 - Public Filing System Enhancements

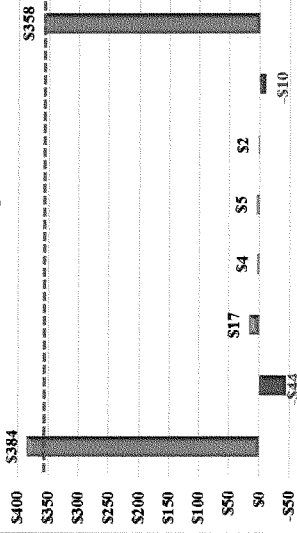
Spectrum Auctions Program

Huge Challenges = Huge Returns

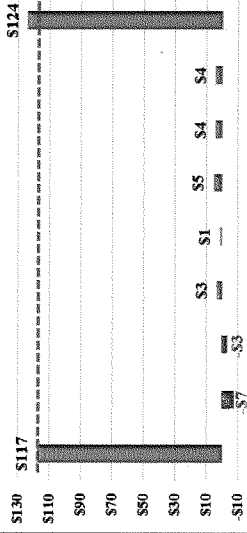


FCC Budget Compared to FY '16

Regulatory Fees - Including Move/Restack

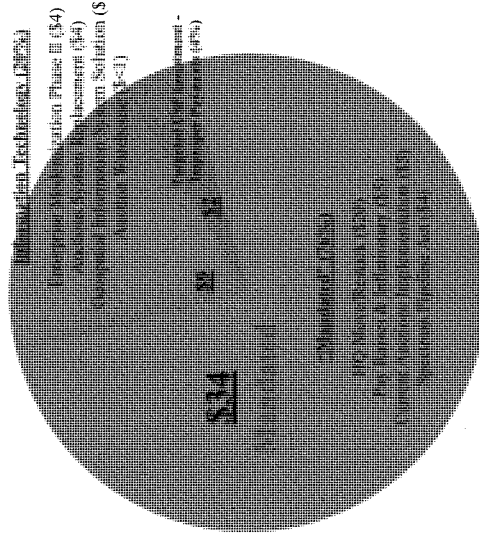


Spectrum Auctions - Including Move/Restack



Dollars in Millions & Rounded

Total new requests (Reg fees+Auctions)
100% = \$45m



IT Investments Are Paying Off

FY '15 – FY '16 Investments

Consumer Help Center	Built at 1/6 th the price (\$450K vs. \$3.2M) in less than half the time (6 months vs. 18 months). Received praise in Forbes. Reduced number of employees required to staff this.
New FCC.gov Website	Built based on extensive input from external stakeholders. Received 90% positive feedback from constituents, including praise from the FCBA. Easier to update and maintain content.
Cloud Based Email & VDI	Increased use by 400% while reducing operational support costs by 30%. Unlimited telework opportunity from any location with higher levels of security.
Server Lift	Cost avoidance of over \$10M. Reduced backup and maintenance costs by >\$250k per year. Reduced operational costs from 93% to <50% by moving to a commercial service provider.
ECFS	Modernizing 16+ year old system used to support 5M public comments last year. If not cloud-based, would have required many more employees to staff.
NORS/DIRS	COTS platform delivered for \$300K using a native cloud platform in less than 3 months. On-premise approach would have been >3x more (\$1m) and taken >3x the time.
FISMA & Cyber Security	Reduced FISMA findings by more than 50% over two years. Increased the resiliency of FCC to respond to cyber issues of concern.



Universal Service Pay-Go

- \$8.3 Billion Annually Disbursed
- Heard from Congress About Waste, Fraud, & Abuse
 - Step #1 – Program Improvement
 - Step #2 – Predictive Analysis Tools
 - Step #3 – Dedicated Staff
- Regulatory Fee Payer Fairness
 - e.g. – Why should broadcasters be assessed to pay for something that they are not involved in?

Mr. CRENSHAW. Now I would like to recognize Mr. Pai for his opening statement.

Mr. PAI. Chairman Crenshaw, Ranking Member Serrano, members of the subcommittee, thank you for holding this hearing, and it is a privilege to appear before you once again, with my friend and colleague Chairman Tom Wheeler. Last year, I offered three specific suggestions regarding the Commission's budget request, and I am pleased the subcommittee and Congress generally took these recommendations into account.

First, Congress provided the FCC with specific budget authority for moving the agency's headquarters, instead of including those funds in our general budget. This was the fiscally responsible approach, and I applaud the Commission for agreeing with this approach in this year's request.

Second, the subcommittee rejected the FCC's request to transfer \$25 million from the Universal Service Fund to the Commission. I opposed this transfer request at the time because it would have imposed a stealth tax increase on the American people. I am therefore disappointed that the Commission is yet again seeking to siphon money from the USF. In my view, USF funds should be spent across this country, closing the digital divide, not at the FCC's headquarters in Washington.

Third, the subcommittee prohibited the Commission from regulating broadband rates. I was disappointed that Congress did not enact this prohibition, but it remains important. Supporters of Internet regulation disclaim any interest in regulating broadband rates.

For example, Chairman Wheeler told your counterparts in the Senate last year, and I quote, "If Congress was to come along and say that is off the table for the next Commission too, I have no difficulty with it." But given past experience, Congress should not just trust promises to avoid rate regulation.

For example, two years ago, I raised concerns about the effect that the FCC's new policy on joint sales agreements, or JSAs, between television stations would have on a JSA in Wichita that enabled Entravision to provide the only Spanish-language news in Kansas. FCC leadership assured this very subcommittee that JSA would not be impacted, saying, and I quote, "There is no way, shape or form that the kinds of positive things that you—I—have been talking about here will not be allowed under the process going forward."

Yet just last month, the FCC's Media Bureau ordered that this very JSA be terminated. Given this experience, the only way to ensure that rate regulation does not happen is for Congress to take a Reagan-inspired approach. Trust, but codify.

Additionally, as you begin drafting our appropriations bill for fiscal year 2017, I would like to draw the subcommittee's attention to three additional concerns. I urge this subcommittee to prevent the FCC from using any appropriated funds to impose a broadband tax. By reclassifying Internet service providers as telecommunications carriers last year, the FCC explicitly opened the door to a tax on Internet access for every single consumer who goes online.

Unless Congress acts, I believe that the FCC will impose that tax. Earlier this year, Congress overwhelmingly passed the perma-

ment Internet Tax Freedom Act, which made permanent the ban on state and local taxation of Internet access. Having thus protected consumers' pockets, it would be quite unfortunate if Congress allowed the FCC to pick them with a nationwide broadband tax in the stealthy darkness of the next Washington winter.

Two, I am skeptical of the Commission's proposal to raise spending on the auctions program to \$124 million. The \$117 million being spent this year is a record, and it is obvious why. This year, in a couple of weeks, we are holding the world's first incentive auction, an enormously complicated endeavor requiring plenty of resources, but by fiscal year 2017, the incentive auction will likely be over, and there is no comparable spectrum auction on the horizon. A \$7 million increase in auction spending thus seems unnecessary.

Three, I recommend that this subcommittee examine carefully the budget request for the FCC's Office of Media Relations. For fiscal year 2017, the FCC requests 15 full-time employees, or FTEs, for this office.

By comparison, in its fiscal year 2017 budget request, the Federal Trade Commission only requests 10 FTEs for its media office. I do not know why the FCC's Media Relations Office should be 50 percent larger than the FTC's, but I do know that there has been a disturbing mission creep within the FCC over the last couple of years when it comes to media relations. Specifically, non-public information is often shared with the press, while commissioners' offices are often left in the dark.

Consider what happened just last weekend, or last week rather, when the chairman circulated his proposal to expand the Lifeline program. My office learned about it, not from anyone at the FCC, but from the New York Times. Moreover, following the publication of the New York Times article, FCC officials held a call with a large group of reporters to spin the Lifeline proposal before giving commissioners a copy.

Yet, somehow, the FCC's rules bar me from sharing any details about the plan, or even the plan itself, with you or with the American public. If the FCC's Office of Media Relations has the time and the resources to engage in activities more suited for a partisan political campaign than the rule-making process conducted by a multi-member administrative agency, then I humbly submit that it is too large and its budget should be cut substantially.

Chairman Crenshaw, Ranking Member Serrano, and members of this subcommittee, thank you once again for holding this hearing. As always, I appreciate the work that you and your tireless staff have done over the past year, and I look forward to working with you in formulating the FCC's budget.

[The statement of Mr. Pai follows:]

**STATEMENT OF FCC COMMISSIONER AJIT PAI
BEFORE THE SUBCOMMITTEE ON FINANCIAL SERVICES AND GENERAL
GOVERNMENT OF THE UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON APPROPRIATIONS**

“BUDGET HEARING—FEDERAL COMMUNICATIONS COMMISSION”

MARCH 15, 2016

Chairman Crenshaw, Ranking Member Serrano, and Members of the Subcommittee, it is a privilege to appear before you today. Thank you for inviting me to testify on the Federal Communications Commission’s budget request for Fiscal Year 2017.

Last year, I offered three specific suggestions to this Subcommittee regarding the Commission’s budget request for Fiscal Year 2016. I am pleased that Congress and the Subcommittee took these recommendations into account.

First, Congress provided specific budget authority for moving the FCC’s headquarters or reorganizing how we use our existing facilities (known internally as “restacking”). Moving or reorganizing is likely to produce meaningful cost savings over the long term, but this will require a substantial, one-time expense. I therefore thought that it made sense for Congress to provide us with specific budget authority for that purpose. If these funds had been included within our general appropriation amount, as the Commission had requested, it would have given many a misleading picture of the Commission’s base budget and made it harder to reduce that budget when there was no longer the need to spend money on moving expenses.

I therefore applaud the Commission for requesting specific budget authority for FY 2017 instead of general budget authority for the second (and hopefully final) tranche of moving or restacking funds. In my view, this is a fiscally responsible proposal, and I urge this Subcommittee to approve it.

Second, Congress and the Subcommittee rejected the Commission’s request to transfer \$25 million from the Universal Service Fund (USF) to the Commission. I opposed the transfer request, among other reasons, because it would have imposed a stealth tax increase on the American people.

I am disappointed that the Commission is yet again seeking to siphon money from the USF to fund the FCC’s work, and I urge this Subcommittee to again reject this proposal. To be sure, the Commission this year is requesting a smaller transfer of \$9.5 million. But the reasons for opposing *any* diversion of USF funds to the Commission are just as compelling now as they were one year ago. I agree with Chairman Greg Walden of the Subcommittee on Communications and Technology of the House Energy and Commerce Committee that transferring USF funds to the FCC is a “disturbing proposal.” And Chairman John Thune of the Senate Commerce Committee has said that it would set “a dangerous precedent.” The Commission’s authorizers are right: USF funds should be spent across our country closing the digital divide, not at the FCC’s headquarters here in Washington, DC.

Third, the Subcommittee forbade the Commission from using any appropriated funds to implement or enforce the FCC’s new Internet regulations. Specifically, the Subcommittee prohibited the FCC from implementing or enforcing these Internet regulations until the court challenge to them had been resolved. And the Subcommittee specifically prohibited the FCC from regulating broadband rates. I was disappointed that neither of these provisions made it into the appropriations bill that was ultimately passed by Congress.

The Subcommittee should take another bite at this apple. There is no legitimate reason to oppose blocking the FCC from engaging in broadband rate regulation. Supporters of the FCC’s Internet regulations have repeatedly disclaimed any interest in regulating broadband rates. President Obama himself told the FCC to “forbear[] from rate regulation.” And Chairman Wheeler told your counterparts

in the Senate last year: “If Congress was to come along and say that’s off the table for the next Commission, too, I have no difficulty with it.”

It is therefore perplexing that the FCC and the Administration lobbied so hard last year to kill this Subcommittee’s attempt to take broadband rate regulation off the table. Indeed, my understanding from multiple sources is that the FCC and the Administration turned down a deal that would have provided millions of dollars in additional funding to the Commission in exchange for a provision prohibiting broadband rate regulation.

All of this raises serious concerns about the Commission’s real intentions. Because when it comes to the topic of Internet regulation, we know from past experience that the previously unthinkable can become quite real the moment political pressure is applied. A less-intrusive regulatory approach can give way to heavy-handed, utility-style regulation. A wireless service plan like T-Mobile’s Binge On can be “highly innovative and highly competitive” one month and be the subject of an FCC investigation the next. Because the past is proving too often to be prologue, Congress should not trust the Commission’s claim that it won’t regulate broadband rates. The only way to ensure that this does not happen is for Congress to take a Reagan-inspired approach: “trust, but codify.”

* * *

As you begin drafting our appropriations bill for Fiscal Year 2017, I want to draw the Subcommittee’s attention to three additional concerns: the looming broadband tax, the proposed increase in auction spending, and the FCC’s oversized media shop.

One, I urge this Subcommittee to prevent the FCC from using any appropriated funds to impose a broadband tax. Without congressional action, this tax may hit consumers in FY 2017—hard.

Some brief background. Every American with a phone bill pays a “universal service fee”—that is, a tax on voice service. That tax is collected by every telecommunications carrier, and the money ultimately is spent by the government on things like the so-called E-Rate and Lifeline programs. By reclassifying Internet service providers as “telecommunications carriers” last year, the FCC explicitly opened the door to the imposition of a universal service tax on Internet access.

At the time, the FCC observed that it had already asked the Federal-State Joint Board on Universal Service to report by April 2015 whether and how the Commission should impose a broadband tax, and it noted that a “short extension” might be needed in light of reclassification. One long year later, we still have no clarity. To be sure, we do know that the federal government and others are eager to dip into consumers’ wallets. For the FCC has already decided to boost E-Rate spending by \$1.5 billion per year (conveniently, right after the November 2014 elections). And it will soon dramatically increase the size of the Lifeline program by expanding it to subsidize broadband (the Chairman’s proposal forecasts spending more taxpayer funds on Lifeline than has ever been spent before).

Unless Congress acts, the money to fund all of this spending will come from a broadband tax. The only question is when. Thus far, all we’ve been told is that no decision on broadband taxes will be made until after the D.C. Circuit decides whether the FCC’s regulations are legal. But given that the FCC hasn’t refused to generally delay enforcing utility-style regulation until after the legal challenge is resolved (and strongly opposed this Subcommittee’s effort to bring about that result last year), one might reasonably suspect that the decision is conveniently being put off until after the November elections. After all, making people pay more to access the Internet isn’t going to be popular.

Congress should not let the FCC impose a broadband tax in the stealthy darkness of the next Washington winter. Earlier this year, on a bipartisan basis, Congress overwhelmingly passed the Permanent Internet Tax Freedom Act, which made permanent the ban on state and local taxation of Internet access. Having thus protected consumers’ pockets, it would be quite unfortunate if Congress allowed the FCC to pick them with a nationwide broadband tax.

Two, I am skeptical of the Commission's proposal to raise spending on the spectrum auctions program to \$124 million. The \$117 million being spent this year is a record, and it's easy to understand why the auctions program is funded at that level. After all, this fiscal year we are holding the world's first incentive auction for spectrum, an enormously complicated endeavor requiring plenty of resources. And included in that budget was \$7.2 million targeted for the Commission's move.

Fiscal Year 2017 should be quite different. The incentive auction will likely be over, and there is no comparable spectrum auction on the horizon for that fiscal year. Even the FY 2017 request for the Commission's move is less—\$4.4 million lower, to be precise. And yet, rather than a substantial decrease, the request for auction spending in FY 2017 is \$7 million *higher*. It's difficult to understand why.

Let's look, for example, at one of the specific spending increases proposed for the auctions program. The Commission is requesting \$3.58 million and three additional FTEs to implement the Spectrum Pipeline Act of 2015. Why can't this work be handled by current FCC employees and the existing budget? Many FCC staffers have been working on issues related to the forward side of the incentive auction. During the next fiscal year, when the forward auction work will be completed, I'm confident that we could easily reassign three of them to help implement the Spectrum Pipeline Act of 2015.

I would also urge this Subcommittee to examine closely whether reductions can be made from last year's spending. Are there expenses that have been or will be incurred during this fiscal year because of the incentive auction that will not be repeated during Fiscal Year 2017? Can we devote fewer staff resources to the auction program if no major auction will be held? And if the answer to one or both of these questions is yes, shouldn't the amount of funds provided by Congress for the spectrum auctions program be adjusted accordingly?

Three, I also recommend that this Subcommittee examine carefully the budget request for the FCC's Office of Media Relations. For Fiscal Year 2017, the FCC requests 15 FTEs for the Office of Media Relations. By comparison, in its budget request for the next fiscal year, the Federal Trade Commission only requests 10 FTE for its Office of Public Affairs, which handles that agency's relations with the media. Why should the FCC's media relations office be 50% larger than the FTC's? The FTC's mission is just as critical and arguably broader, considering it applies consumer protection and competition rules to virtually all non-common carriers. Given that this Subcommittee has jurisdiction over both the FCC and FTC, it is well-positioned to look into this matter.

From my perspective, I have witnessed a disturbing mission creep within the FCC over the last couple of years when it comes to media relations. Specifically, Commission staffers are being directed to conduct what are most appropriately described as propaganda efforts. Non-public information is often shared with the press while my office is left in the dark. Resources are poured into controlling press cycles, creating pithy Twitter hashtags, and garnering positive headlines for the Chairman's Office rather than working inside the building to reach consensus. In some cases, the agency's media blitz appears designed to exert pressure on other Commissioners, both Democrats and Republicans, to vote for the Chairman's proposals. This, in my view, is inappropriate. Career staffers should not be conducting media campaigns designed to influence the votes of FCC Commissioners. Indeed, until Commissioners vote on a proposal by the Chairman, the Commission as a whole has no position on that proposal. Yet the Chairman's Office's hope—usually required—is for the press to run headlines “The FCC is about to [insert policy prescription du jour].”

What makes the matter worse is that these media campaigns are often conducted on background so Commissioners and the public have no idea who is waging them. Indeed, the trade publication *Communications Daily* reported last December that “the FCC stands out for its extensive use of events where officials speak on behalf of the agency to groups of reporters but the officials can't be identified by name or quoted verbatim.” The publication further reported that “[m]any PR experts said they couldn't

recall any agency other than the FCC that holds news events that aren't on the record so routinely on matters unrelated to national security."

One example of what has gone wrong occurred just last week when the Chairman circulated his proposal to expand the Lifeline program. My office did not learn about this proposal from the Chairman's Office. We didn't learn about it from the relevant FCC Bureau or anyone else at the Commission. Instead, we first found out about it from an article in *The New York Times*. That's right. The Chairman's proposal was shared with *The New York Times* before it was shared with FCC Commissioners—or at least with the minority Commissioners. Moreover, following publication of *The New York Times* article, FCC officials held a call with a large group of reporters to promote the Lifeline proposal *before* giving Commissioners a copy of the plan. Conduct like this does not reflect respect for the role played by other Commissioners at the FCC and should stop immediately.

If the FCC's Office of Media Relations has the time and resources to engage in activities that are more appropriate for a partisan political campaign than the rulemaking process conducted by a multi-member administrative agency, then I suspect that it is too large and its budget should be cut substantially.

* * *

Chairman Crenshaw, Ranking Member Serrano, and Members of the Subcommittee, thank you once again for holding this hearing and allowing me the opportunity to speak. I look forward to answering your questions, listening to your views, and working with you and your staffs in the days ahead.

Mr. CRENSHAW. Well, thank you very much. And now we will begin a round of questions. Let's use the 5 minute clock, which means when 5 minutes is up, that means if you are answering a question or you are asking a question when 5 minutes is up we will need to move on. We will probably have another vote in about an hour and a half, so we want to try to get at least one round of questions in. So, if everybody would try to observe that.

Let me start by asking Chairman Wheeler about what I talked about in my opening statement, this whole question of regulating rates for broadband service. As you know, a couple of times, maybe several times, you had repeated publicly that the Commission was not going to regulate broadband service. I think there was some vagueness in the Open Internet Order about whether that was going to happen or not, and so people were a little uneasy. People just want to have certainty. If you are going to invest a lot of money in infrastructure that is going to be out for 10 or 15 years, then you want to know what the future looks like.

And so, when we tried to kind of come up with a language to put that in the bill, we actually contacted your staff and said, "Could you help us with some technical language to actually draft this? And, as I said in my opening statement, it was like a brick wall. We got no response. We asked back in June. So, I guess my question is what was the reticence? What caused this lack of response from your staff? Do you have an answer to that?"

Mr. WHEELER. Thank you, Mr. Chairman. I think there are a couple of things there. First of all, you know, the statement you cite has become somewhat apocryphal. I sent a letter last night to the chairman and ranking member of the Commerce Committee to try and lay out exactly what had been said. And in that context, I think that it is important to answer your question.

The question that I had been asked was about the forbearance that we had put in for Section 201(b) of the Act, and somebody said and questioned, "Well, what about if the next chairman comes along and decides to de-forbear? And I said, "I have got no problem if you prohibit de-forbearing, if there is such a word." And that has, you know, morphed over time to be some comment about general regulation.

Mr. CRENSHAW. Well, let me ask you. Did you say you did not say that? And just tell us.

Mr. WHEELER. No, I was talking about——

Mr. CRENSHAW. Did you say that you did not think the Commission ought to regulate broadband rates?

Mr. WHEELER. We have forbore from regulating broadband rates.

Mr. CRENSHAW. Is that the same thing?

Mr. WHEELER. Yes. We will not regulate broadband rates.

Mr. CRENSHAW. Okay.

Mr. WHEELER. And the question to me was, "Okay, the next guy—we trust you, but the next guy comes along, or gal, what happens?" And I said, "Fine, if you want to go ahead and codify that de-forbearance." But then the whole issue became something far greater, which was——

Mr. CRENSHAW. Are you explaining why they would not help us write the language to implement what you had said?

Mr. WHEELER. My hope, sir, and my understanding is that implementing what I said was possible. The difficulty was that there have been multiple efforts to go far beyond, to hit the broader question, of regulation writ large and whether the Commission knows——

Mr. CRENSHAW. All I know is when we heard you say you did not think that the Commission would regulate rates for broadband service, we said, “Why not write that down,” and we needed some technical assistance because that is what you guys do, and we asked your staff, “Could you help us write that down,” and they did not say, “Well, it is too complicated” or, “The Chairman does not have everything that he needs.” They just did not say anything. And so, I am just really wondering. Because if you are not going to help us do that, we will try to do it on our own. We were giving you the opportunity to have your staff do that and, so you need to tell us. Because if you are not going to do it, they just need to say, “We are not going to do that.”

We actually, I think, got some information some time—we asked in June, I think, and received something after some time in November, I think. But the proposed language that was sent did not really answer the question. So, the question is if you will do that, I mean, if you would agree to do that, just tell us and then tell us you are going to do it within a reasonable amount of time. If not, say, we are not going to do it.

Mr. WHEELER. We would be happy to assist in the development of language if it fulfills what I said.

Mr. CRENSHAW. Okay. Well, then, can you do that in the next couple of weeks?

Mr. WHEELER. Sure.

[The information follows:]

The Federal Communications Commission shall not reverse the forbearance granted in the Report and Order on Remand, Declaratory Ruling, and Order that was adopted by the Commission on February 26, 2015 (FCC–15–24) to the extent that the Order forbears from application, in all or part, of sections 201–205 of the Communications Act of 1934 to broadband internet access service, as that term is defined in 47 C.F.R. section 8.2(a).

Mr. CRENSHAW. Okay. Well, we will follow up on that.

Mr. WHEELER. Yes, sir.

Mr. CRENSHAW. Okay. My time is about up, so let’s keep going and let’s turn to Mr. Serrano.

Mr. SERRANO. Thank you, Mr. Chairman. Chairman Wheeler, for the first time since fiscal year 2013, the FCC received an increase of \$44 million in the most recent bill. It was mainly for a move out of your current space that will end up saving around \$119 million according to your estimates. Hopefully, that will encourage the subcommittees to give you more funding in the future, since they see the good things that come from it.

Does OMB support it and has this been done? This year, you are actually asking for a bit of a decrease, in part because a large chunk of the move that we funded last year is a one-time expense, and partially because your vast \$9.5 billion in recovery of U.S. oversight costs. You have requested this in previous years, and the subcommittee has not agreed to it, but this is significantly modified from your previous requests.

Please explain it to us and why it is necessary. And I am sorry that I asked you the final part first, because I want to be supportive, as has been done before.

Mr. WHEELER. Thank you very much, Congressman. Yes, OMB supports this. We believe that we are going to hear from GSA in the next couple of weeks as to what happens, and as we discussed last year, this is a two-tranche project with—the move is, with the big costs happening this fiscal year, and this being the follow-on closing the expenses.

Insofar as the universal service police force, if you will, what I have been saying about how do we make sure that we target waste, fraud, and abuse: we have had a three-tier approach to that. The first has been to put systems in place.

We now have the duplicate database which my predecessor Julius Genachowski started. We will be voting on an order later this month that ends what I call the fox guarding-the-henhouse self-certification program, and establishes a national verifier, rather than trusting others to do it for us.

Secondly is the software program that I mentioned that actually looks for anomalies. You take all the data that you get in, and you apply big data principles to it, and you can sort through and look for statistical anomalies, and say, “Hey, we have got to go put shoe leather against that.” That then leads to “Okay, how do you have the shoe leather?” And that is what the \$9.5 request is for. I heard your message loud and clear.

Last year, what I was saying was I think that it makes sense that all universal service program costs should be funded as a part of the program. I heard you loud and clear saying no. At the same point in time, I am hearing from members of this committee and other members of Congress about what are you doing to police the universal service program and make sure that the peoples’ money is spent as it is supposed to be spent. And my point is, we have got this three-tiered process in place, but I think that the policing ought to be paid for by what is being policed, and not by broadcasters and cable operators and ham operators and wireless carriers and others who are tangential to the whole operation.

Mr. SERRANO. Do I have no time left? Mr. Pai, do you totally agree with him? Maybe it is a dangerous question.

Mr. PAI. Congressman, I take a somewhat different view on the Universal Service Fund. Zooming out to 60,000 feet, let’s think about what the purpose of the Universal Service Fund is. It is to make sure that all Americans in this country, consistent with Section 1 of the Communications Act, have access to cutting edge communications services.

And so for me, that \$9.5 million or \$25 million last year, whatever that number is, every dollar we take from the fund is one less dollar for low-income students to be able to access the Internet in your district. It is one less dollar for rural Alaskans to be able to get fiber to their village. It is one less dollar for people in my home state of Kansas to be able to participate in a rural healthcare program. That is why I think it is critical for us to treat the USF for the purpose it was originally meant for, which is closing the digital divide.

Now, the second part of that is, I completely agree with the chairman, that we need to root out waste, fraud, and abuse. But under our rules and under the laws set forth by Congress, the regulatory fees that are paid for by the people we regulate have to be related to the cost of administering our regulations.

And so, for example, under the Universal Service Fund, if there are particular costs to administering it, then those should be passed on to the people who benefit from it, for example, wire line and wireless carriers. If there are broadcast regulations that need to be administered, then broadcasters have to pay for it. That is the way, I think, to attack that problem, not to take money from one pot that is meant to benefit all Americans and transfer it to the headquarters in Washington.

Mr. WHEELER. May I just say just one thing?

Mr. CRENSHAW. Sure.

Mr. WHEELER. That this committee has done that in the past with this program, specifically twice having targeted appropriations for the Office of Inspector General for the purpose of delivering the kind of thing that I have just been talking about, and then those have not been funded in subsequent years.

Mr. CRENSHAW. Thank you. I will turn it over to Mr. Graves.

Mr. GRAVES. Thank you, Mr. Chairman. Chairman, Commissioner, good to see you. It is timely you are here today, given an issue that has been in the news recently about set-top boxes and I want to talk about that in a minute, and feel free to define that term also. It is an industry term, I assume.

But just knowing what interest you have taken as a commission of recent, and then knowing how the industry over the past several years have just been doing some amazing things with new technology. In fact, bringing programming to individuals, people, wherever they are, whenever they want to watch something, and now understanding that the Commission is moving into a new phase of wanting to regulate or mandate various items within this sector.

So, for me, and I guess, for the committee as well, knowing that your interest is always consumer protection in many different ways. Generally things like this come from an outcry somewhere, so Commissioner Pai, maybe you can just help us understand, what is the problem that is trying to be solved here, and where did it derive from?

Mr. PAI. Thank you for the question, Congressman. Unfortunately, the problem to the extent there is one, in the marketplace for navigation devices or set-top boxes, whatever you want to call that clunky, expensive equipment that nobody seems to want, is the fact that the FCC has had a highly intrusive set of regulations to create the market that it thought it wanted. The problem is that the marketplace, as typically happens, has greatly outpaced where regulations are.

Twenty years ago, I used to watch Seinfeld using a set-top box that would transmit information to my television screen. Last night, I touched my smartphone, pulled up a Crackle app, and watched Seinfeld's show with Steve Martin, Comedians in Cars Getting Coffee, and this is just how different the marketplace is. And so, for the FCC, it does not seem to me we should be doubling down on this 1990's technology that nobody seems to want. We

should be encouraging an app economy, something that is much more consumer friendly, that is more flexible, that is more competitive, because in the future, three years from now, which is the earliest point at which these proposed regulations could possibly take effect, who knows where the marketplace could be.

The Amazon Echo could be the navigation device, the set-top box of the future, or it could be an app. So, I tend to think we should focus more on some things that are actually concerning to consumers, as opposed to trying to issue backward-looking technological mandates that will not solve a problem.

Mr. GRAVES. And so, what is the overarching problem, though, that the Commission is trying to solve?

Mr. PAI. Well, the problem as stated by the FCC's majority is that the marketplace for set-top boxes is not competitive. And their argument is that the market share held by certain cable operators for the set-top boxes is large, and that people really do not buy competitive set-top boxes. But it seems to me that if you talk consumers, especially younger consumers who are often on the leading edge of the video revolution, they do not think about, with any excitement anyway, the next set-top box that the FCC is going to help them get into their homes; they are thinking about ways to access video directly through much more technologically-sophisticated means.

Mr. GRAVES. Right. And you referenced apps, and I know you can pretty much go to any website, whether it is a—I do not know, any sports website, and if you want to watch the sports programming, you would log in under your login or preference based on your provider of some sort.

So, access is currently there, and I guess my question, and maybe, Chairman, you could help me understand this, how does imposing a new mandate benefit the industry in any way or consumers in any way? Because traditionally, I think, our understanding is that mandates create barriers oftentimes, and less access.

Mr. WHEELER. Thank you, Congressman. Excuse me. Yes, I agree that the world is going to software and apps. Unfortunately, the example that Commissioner Pai gave about how you could tune your channel using an Echo is not possible, because the cable operators do not give the information that would be necessary for an Echo to operate. And therein lies the rub.

This Congress has said, in Section 629 of the Communications Act, that "there shall be available to consumers, competitive alternatives for navigation devices." And there has not been, for the last 20 years. We have now gotten to a point where technology makes that possible. The very apps that you are talking about, that kind of approach, the very fact that you can protect copyright and watch things on your iPad, your Android device, or your smart TV, is the same kind of thing that opens up this opportunity.

And when there is a clear cut, black-letter mandate from the Congress saying consumers shall—not may—shall have choices and the Commission shall do this—that is what we are following through on, because 99 percent of American VMVPDs—the cable and satellite subscribers have no choice in what their boxes are or

their apps are. You take that which is provided to you by the cable company.

All we are saying is we want to provide all the same protections the cable operator has today, but just make sure that they talk to these other devices, like the commissioner mentioned, an Echo, or anything else, so that that can control open access. And they need to make a decision, do I need to have the \$10 a month that I keep paying for this box? I mean, the average home pays \$230 a year for a box they really do not need. And that they are told that they have to rent. It is like the old days when we used to have to rent phones.

Mr. GRAVES. Mr. Chairman, if I could just follow up. How does this differ from, in the past, paid programming? You know, whether it be sports programming or movie programming, Showtime, HBO, or any other programming? What is the difference in that today and in the past, and why—

Mr. WHEELER. I am not sure I understand the question. If you are saying, would there be—sorry. Thanks.

Mr. GRAVES. What is an equal access? At that time, you had to go through a provider, you had to have paid.

Mr. WHEELER. And you still would under this proposal. Nothing changes. What happens is that the cable operators content, the tiers they have, the authorization as to whether you can record, the protection for privacy—all of these kinds of things remain the same. The information that they send upstream today only talks to a device that they control. And we are saying open up that so it can talk to other devices, just like your smart TV talks to Netflix or Hulu, or whatever the case may be, and allow for that kind of openness, so the consumer has a choice between paying that \$10 a month, every month, month after month, or having an alternative choice.

But you know, let's be clear. We do not want to infringe on the structure of the programming part that cable operators are doing. This is a proposal, and if there are holes in the proposal that they are concerned about, we want to hear from them. But the fascinating thing is, this is also a proposal that happens to track what they proposed in 2010, when they came forward and said, Let's do something like this.

Mr. GRAVES. Under this proposal, it did allow cable providers to have access to Netflix or other programming that is outside of that set-top box.

Mr. WHEELER. Cable providers?

Mr. GRAVES. You mentioned broadcasters, cable—you were talking about the box in which they—

Mr. WHEELER. So, today, what—

Mr. CRENSHAW. Can you just give a "yes" or "no" on that, because we have got to move on?

Mr. WHEELER. There is a flaw in the assumption.

Mr. CRENSHAW. We will come back to that.

Mr. WHEELER. Okay.

Mr. CRENSHAW. Let's go now to Mr. Quigley.

Mr. QUIGLEY. Thank you, Mr. Chairman. Let's stay on the set-top box because it is what everybody at home cannot wait to hear about. One of the concerns you mentioned was privacy.

Mr. WHEELER. Yes, sir.

Mr. QUIGLEY. So, if you got third party people competing, opening up this market to them, do you have the authority, does the FCC have the authority to require these set-top box manufacturers and app developers to meet the privacy protections that we would be concerned about?

Mr. WHEELER. Thank you, sir. We have the authority to say that you do not have to deliver those signals to a box that does not meet the privacy requirements that we have. And then, the FTC and the state A.G.s have the same kind of authority that they have on the boxes that they have over smart TVs and everything else.

Mr. QUIGLEY. Do you think that still meets the same concerns, having to do it that way?

Mr. WHEELER. I think that it is actually tougher privacy than exists today. You know, you can access information on your smart TV. You know, Samsung put out an alert a couple of weeks ago, saying, "Make sure, when you are talking in front of your TV, that you are aware that we are listening to you, and that we are going to be mining that information."

Mr. QUIGLEY. Well, let me just mention the other issue that was brought up along those lines, and that is the copyright protections.

Mr. WHEELER. Right.

Mr. QUIGLEY. As you have gone forward with this rule, you know, have you all been working with U.S. Copyright Office, making sure that what we are seeing is accurate, as far as they are concerned?

Mr. WHEELER. We want to maintain all the existing copyright protections, and part of the whole process, obviously, is working with the Copyright Office, sir.

Mr. QUIGLEY. Okay.

Mr. PAI. Congressman, one of the things that I think is remarkable about his proceeding is that dogs and cats, so to speak, have come together: video distributors and video programmers have spoken with a unified voice, saying that they have great concerns, especially when it comes to copyright. And one of the reasons why—one of the examples they give is advertising. Nothing in the proposal the FCC adopted, over my dissent and the dissent of one of my colleagues, would prevent a third party set-top box manufacturer from taking the programming stream, which includes certain advertising, and either removing that advertising and inserting their own, or layering their own advertising on the side.

And one of the concerns is that the third party set-top box manufacturer would be monetizing their knowledge about what you watch, when you watch, how you watch it, how often you watch it, et cetera, and inserting its own advertising, and that is a species of the privacy concern that they have.

Similar concerns have been voiced on the copyright side as well. And so, I think it is remarkable for those two entities, as I said, to unify on this, and it speaks to the fact that I think the FCC really needs to proceed with great caution.

Mr. QUIGLEY. So, we are in a hurry. Quick response. The incentive auction, repackaging all these stations. We have set aside \$1.7 billion to the fund that cover the entire costs or repackaging more

than 1,400 TV stations. We are hearing that it is going to be far more expensive. What do we do?

Mr. WHEELER. So, I think that we will know that later because you do not know what the answer to that question is until you know who is participating in the auction. We will have a good feel of that within 90 days of the close of the auction, and I will be—if there is not enough money, I will be the first person to say so. I will be leading the parade to come back up here and say, “Yes. We need money in that pot.”

But the important thing, also, I just want to reiterate what I said about the budget, is that if we cut the amount of money that we are requesting in the auction, which is an increase, it is going to have an impact on the ability to move these broadcasters and to do the kind of coordination that is necessary.

Mr. QUIGLEY. And I guess if you want to comment, great. Thirty-nine months, same thing. Is this enough, or are you going to ask for an extension?

Mr. WHEELER. So, you know, we have studies, there are all kinds of studies—the NAB first filed and said 30 months. Now, they say it may be 10 years. I think we will know that, again, when we know the scope of the challenge that we face. We have also built into our 39 months a waiver process. So, if it does not work for this station or that station, there is a waiver that they can get. But again, that is something that we would make an assessment of, when you know what the facts are, rather than the hypotheticals.

Mr. QUIGLEY. Given the limit of time, I just want to make sure if you want to comment.

Mr. PAI. Thank you, Congressman. With respect to the budget, the \$1.75 billion that Congress allocated for the relocation fund is all that we have got. And so, that is why I proposed a couple of years ago that we treat that as a budget, because otherwise, it comes out of the pockets of the broadcasters who have to repack. I am not sure whether we are going to exceed that number, but if we do, then I think it will be ultimately up to Congress to make a determination.

With respect to timing, I think if we get credible information that it will take longer than that, then we have to consider what options we have at the FCC, the waiver process the Chairman mentioned, or Congress may have to take action as well to ensure that we do not have a train wreck.

Mr. QUIGLEY. Thank you, gentlemen.

Mr. CRENSHAW. Thank you. Mr. Yoder.

Mr. YODER. Thank you, Mr. Chairman. Chairman Wheeler, Commissioner Pai, welcome back to committee. It is always one of the more interesting, entertaining hearings that we have each year.

Mr. WHEELER. Could the record just show that we just agreed on something?

Mr. YODER. Yeah, that is right. Let’s take a moment, just a moment of silence there. Rod talked to you, Commission Pai. It is March Madness.

Mr. PAI. Amen, Congressman, America’s team.

Mr. YODER. And we are the number one, number one. I do not know if anyone noticed that or not.

Mr. PAI. Speaking impartially, I agree with you.

Mr. YODER. Yeah, thank you, thank you. I want to ask you both about the issue surrounding joint sales agreements. And as we know, joint sales agreements have been credited with a lot of positive things, saving millions of dollars in my state, allowing for the only local Spanish language channel in Kansas. It has even been credited with saving lives due to tornadoes and such, where Doppler radar has been invested in in Joplin and other parts of the country.

And in spite of bipartisan support, in 2014, the FCC made significant changes to the ability for entities to continue to have joint sales agreements, and effectively ended many, if not all, of the joint sales agreements. And I understand that there has been some concerns of bad actors, but it appears we have thrown the baby out with the bathwater.

This subcommittee then, last year, included language in its appropriations bill that superseded, grandfathered the agreements that were in place, I think on March 31st, 2014, and that language did not say unless the parties change hands, or unless the legal entities change. It said that the agreements themselves were superseded.

I know Chairman Wheeler, and Commissioner Pai, you have seen the bipartisan letter from senators that range pretty far across the spectrum. You have got Senator Blunt to Dick Durbin to Mikulski to Chuck Schumer, Cory Gardner, Tim Scott, you know. It is kind to get all those folks together and agree on something, so you have got them to agree that they believe that the FCC, in essentially prohibiting and unwinding those agreements as violating not only in spirit but the letter of the law that was passed through his subcommittee last year.

And so I guess, Chairman Wheeler, I give you a chance to respond to those concerns, and then Commissioner Pai, to give your perspective on it as well.

Mr. WHEELER. Thank you, Congressman. The precedent at the Commission has always been that when a license is sold, and a new license is issued to a new buyer, it is a new license, and the terms and conditions that were once ascribed to the previous license and the previous owner do not transfer. We have held that for 30 years across a vast array of cases. And that is the situation here that—you see, Congressman. All JSAs at the date that you passed your rider are grandfathered. But when the license goes away, and a new license is issued, the terms and conditions of the deceased license do not transfer.

Mr. YODER. Mr. Pai, do you agree with that? And then, what are the practical results of that interpretation of the law we just passed a couple months ago?

Mr. PAI. Thank you for the question, Congressman. I think it is very disturbing that two years ago, in this very room, the FCC committed to this very subcommittee that that particular JSA would be protected. “Nothing that we are doing will make this go away,” according to the chairman, back in 2014.

In the meantime, Congress overwhelmingly and in a bipartisan way told the FCC, “We want you to grandfather any JSAs that are in existence.” And as you pointed out, there was not any wiggle room for license transfers, or the like. The law was the law. And

I would humbly submit to you that if the agency is to be bound by the principle that ours is a government of laws and not of men, then we need to respect the bipartisan will of Congress, as expressed in the law, and as recently as last Friday, reified by a pretty diverse group of a dozen senators.

And I think we also need to think about the impact that this is going to have on the industry going forward. If the FCC is not bound by the law that is set forth by Congress, if it is essentially left to its own whim, then we are going to be left in the situation we were in before Congress said, which is—before Congress spoke, which is that we have this inchoate waiver process where a few favored parties might get a waiver and the vast majority of them do not. That does not create a lot of certainty for the industry. That is also not fair for a lot of the parties who entered into these transactions years ago and were explicitly told by the FCC they were okay.

So, I think Congress certainly needs to be much more specific next time, if necessary, to make sure that this does not happen again.

Mr. YODER. Chairman Wheeler, I kind of agree with Commissioner Pai here. And it seems like the intent of Congress, regardless of precedent within the FCC was to protect these agreements, and the practical realities of them are that now they are being eliminated. How do you respond to that?

Mr. WHEELER. So, I guess I would just agree with Gray Broadcasting, who was involved in this transaction, who filed with us and said, The new law does not automatically grandfather the KDCU TV JSA because Gray was not a party to the KDCU TV JSA or any other JSA that was in effect. That has been longstanding processes at the Commission in multitudinous kinds of issues.

Mr. YODER. Thank you, Mr. Chairman.

Mr. CRENSHAW. Thank you, Mr. Bishop.

Mr. BISHOP. Thank you very much, Mr. Chairman, and welcome, Mr. Chairman and the commissioner. I want to talk about the set-top boxes again. I have heard comments from minority content providers that the FCC's proposed set-top box rule may negatively impact revenue for these content providers because set-top box manufacturers may be able to add layers of advertisement that would de-value the advertising slots that it incorporated into the program.

Have you commissioned any studies, internal or external, to determine the impact—to project the impact of the set-top box proposal on minority programmers, and the availability of diverse programmers programming for consumers?

Mr. WHEELER. Thank you, Congressman. You know, the interesting thing about minority programming is where you stand depends on where you sit. There are approximately four African American-owned cable channels in the 500-channel universe. They have a good thing going. They like it.

Mr. BISHOP. Right.

Mr. WHEELER. There are well over 100 who are seeking access, have been denied access, and see this as an opportunity to get access. You know, there is a division on this issue of those that have, and those that have not. And what we are trying to do is to see that there is a system that creates open opportunity for everybody.

And if you get locked out by the cable operator, you are not sent over here into some programming purgatory where nobody will ever see what we have got, and that is what we are trying to accomplish.

Mr. BISHOP. So, have you done a study on the——

Mr. WHEELER. On the advertising issue? I am sorry?

Mr. BISHOP. No, on the impact that the rule would have on those four.

Mr. WHEELER. That is what we are doing.

Mr. BISHOP. Or any of those others who are trying to get in who have not gotten in yet?

Mr. WHEELER. That is what we are doing right now. That is what the process of this notice and comment.

Mr. BISHOP. So, you are doing——

Mr. WHEELER. We are seeking the comments for everybody to come in, both pro and con, and present, for the record, their own information on which we can make a decision.

Mr. BISHOP. Got it. Okay. With regard to the auction repackaging, several broadcasters in my district met with me recently to discuss some of their concerns regarding the upcoming spectrum incentive auction, and they told me that a 39-month deadline for repacking spectrum may not give them enough time because of the number of stations expected to be moved, which is predicted to be well over 1,000. And the limited availability of tower crews and tower manufacturers, and even seasonal weather days. So, what considerations has the FCC given to creating this 39-month deadline, and does the FCC have any plans to extend the deadline, if it appears to be a problem for a considerable number of stations in order to get the job accomplished?

Mr. WHEELER. Thank you, sir.

Mr. BISHOP. The available crews, and——

Mr. WHEELER. Yeah, it is a legitimate issue that has been raised. I go back, again, to the budget. And if you cut the auction budget, it is going to have a direct impact on our ability to oversee this transaction. I hope that it is over 1,000 that are going to sell their licenses, but I do not know what the answer is. And obviously, if 500 participate, it is a different scaling challenge than it is with 1,000.

Again, I think Commissioner Pai and I are in accord on the fact that, A, we need to have a waiver process, and B, if this situation comes in, and it is so large that we have problems, then we have to revisit that whole thing. But right now, you know, there have been numerous studies. I mean, some people say, 39 months is plenty.

As I said, the National Association for Broadcasters first filed and said 30 months was plenty. Others say, "No, you need much longer." We really will not know until we know how many licenses we are talking about.

Mr. BISHOP. All right. My question is that, if it appears as if more time is needed, will you be flexible enough to extend the time so that——

Mr. WHEELER. Yes, sir. We have waivers, first of all. And second of all, if there is this flood that needs to be dealt with, then it would be irresponsible if we do not deal with it.

Mr. BISHOP. All right. Do I have any more time left?

Mr. CRENSHAW. Yeah.

Mr. BISHOP. Okay.

Mr. CRENSHAW. Four seconds.

Mr. BISHOP. Oh, well.

Mr. CRENSHAW. No, go ahead.

Mr. BISHOP. Okay. The Internet is critical, obviously, in today's society to facilitate education, work, and for keeping in touch with loved ones, particularly in rural ones, like my district. But to realize the benefits of some of the higher broadband width applications like telehealth, faster speeds are needed. The Commission recognizes, last January, when it changed the definition of broadband to 25 megabits per second and 4 megabits per second for download and upload speeds, respectively, as well as by increasing the bandwidth requirement for the receipt of Connect America funding.

Unfortunately, many rural Georgians still have speeds below that threshold. Can you discuss the efforts that the FCC is undertaking, as well as any future plans you might have to help close the gap between rural and urban America to ensure that this large segment of our population does not remain locked out of education and business opportunities? And the follow up to that would be, do you have any plans to increase minimum speeds for Connect American Fund to a level on par with the definition of broadband for the rest of the country?

Mr. WHEELER. Yes, sir.

Mr. CRENSHAW. Mr. Wheeler, you got 10 seconds. He used up all your answer time. So, quickly, if you can.

Mr. WHEELER. I am aware of everything he is talking about, and I would love to exchange—maybe we can get a specific—we can get an off sidebar here, we can talk about it. But yes, the answer is I believe that there are solutions on both of the things that you raised.

Mr. CRENSHAW. Let the record reflect his question lasted more than four seconds.

Now, recognizing Mr. Womack.

Mr. WOMACK. Thank you, Mr. Chairman. Good to see Mr. Wheeler and Mr. Pai again. While I was out, I understand that the ranking member asked a question of the chairman, and I want to come back to Commissioner Pai on it for a response. Noting the statement on page 4, the budget request, and I quote, "In addition, the Commission requests the transfer of \$9.5 million from the Universal Service Fund to the Commission to cover costs related to the oversight of the USF programs for the enforcement of bureau, and for the office of managing director."

Commissioner Pai, do you believe it is appropriate for the Commission to operate outside the oversight of this committee, and seek to use the USF, intended to the provided vital telecommunication service to those who may not otherwise have it, to support general operations of the Commission?

Mr. PAI. Thank you for the question, Congressman. I absolutely do not, first and foremost, because the purpose of the USF, as you pointed out, is to close the digital divide across the country, not to administer programs here in Washington, D.C.

Mr. WOMACK. Very good. Thank you. Chairman Wheeler, focusing on the incentive auction, and its potential impact on TV stations and viewers in my state, it is my understanding that broadcast stations being repacked with their assigned, specific dates by which they have to be operating on their new channels. How will these dates be established?

Mr. WHEELER. So, again, we have to see what repacking is necessary, and we will not know that until after the auction. Again, it is a very complex issue. The reality is that every station relates to every other station because it is a question of how you avoid interference.

So what you do here in one station has an impact hundreds of miles away, and so it is a very arduous process. It depends upon how many stations there are in each market. It is why I said, during my direct testimony, that the kind of request that we are asking for in terms of auctions, it is crucial so that we can deal with this, because it is going to be a big deal. It has been no easy task to get to this point in the auction. But when the gavel falls, the game is not over. It is just starting.

And the broadcasters have the right to expect that we will make decisions working with them and help them through their problems. And yes, there are a limited number of tower crews, there is a limited number of building times. There are all kinds of limitations they face. And the wireless companies have a right to expect that what they paid billions for, they are going to be able to get access to now, not five years from now. That is a very arduous process.

Mr. WOMACK. How do you take into account adjacent markets and the potential interference in these dates?

Mr. WHEELER. How do you take them into account? You work to reduce the potential interference.

Mr. WOMACK. I mean, there will be interference.

Mr. WHEELER. What we are trying to do is to build a program that leaves them with an equivalent market to what they had before they went into the auction. And that means protecting them from interference. So I am not willing to stipulate to that assumption, sir. Our goal is to make sure that we have put together a package and, again, it is arduous, that makes sure that this kind of interference does not happen.

Mr. WOMACK. Commissioner Pai?

Mr. PAI. I agree with the Chairman that it is arduous, and I agree that software is going to be necessary. So this is about getting software to structure that the remaining broadcasters in such a way as to not cause interference. One thing I would include as a caveat, however, is that there could be interference by design. And what I mean by that is that the band plan that the FCC adopted, over the objections of virtually everybody in the industry, the broadcasters, the wireless companies, and unlicensed advocates, would, for example, place broadcasters, full-power broadcasters, in the middle of the wireless band. In the duplex gap for example, you could have a broadcaster that could cause interference to other wireless carriers. And so that is one of the reasons why I expressed concern along the way that this band plan would essentially incorporate, potentially incorporate interference into the

remaining market, the resulting marketplace after the incentive auction is over.

Mr. WOMACK. Good. Mr. Chairman, how much time do I have left?

Mr. CRENSHAW. Twenty-eight seconds.

Mr. WOMACK. I know that look on your face when I have only got 28 seconds. There is not enough time to answer this. Maybe we can do this for the record. But I have a privacy question, maybe another round, we can come back to it. Thank you, Mr. Chairman. I will yield back.

Mr. CRENSHAW. Mr. Rigell.

Mr. RIGELL. Thank you, sir. Thank you, Mr. Chairman. And Chairman Wheeler, Commissioner Pai, thank you for being here. It is one of the more interesting hearings that I attend, and I always learn something from this.

So let me get right to it. Page 3 and page 4 of your written testimony, Commissioner Pai, paints really a troubling picture of—and it speaks for itself, but it is an increasing level of distrust, if you will; and I do not want to characterize it. It is here, it is written, but it is troubling. And circumvention of maybe the more expected communication methods from the chairman to the other commissioners. And I am really going to direct the question to the chairman because I think he needs to address it directly.

Bottom of Page 3, for example, indeed the trade publication Communication Daily reported last December that, “The FCC stands out—” not for exceptional performance here—that is my words—“but for its extensive use of events where officials speak on behalf of the FCC to groups of reporters, but the officials cannot be identified by name or quoted verbatim.”

And on Page 4, the Lifeline program where Commissioner Pai indicates that he did not learn about that from your office, Mr. Chairman, but instead from the New York Times. So would you please respond to that as to why that does not seem that things are healthy in your agency.

Mr. WHEELER. Thank you, Congressman. You know, one of the challenges we face is that the topics we discuss are very complex. I think it is why you say that this is one of the more interesting hearings that you have, or at least I hope it is. And so, do we hold briefings so that people understand exactly what we are proposing? Yes, sir. Insofar as the New York Times article was proposed, I mean, you know, when we were before the Senate Commerce Committee, several of us testified that we were about to bring out a Lifeline order. Commissioner O'Reilly had a blog talking about the Lifeline order we were shown before it surfaced. It was not a great secret that we were working on a Lifeline order.

Mr. RIGELL. Well, let me just say that I think the commissioner put it in because it is a sincerely and deeply held assessment and a troubling one of the agency. And, you know, to the extent that we serve as some type of board of directors on this, and I know we are probably the last ones to talk about how to work across the aisle here, but that needs attention.

Let me pivot over to something that a local constituent on the eastern shore of Virginia has brought to our attention. He is concerned about whether repackaging or repacking, the sharp increase

and the demands on the supply chain, are really going to stretch it beyond its breaking point. I guess if you are one of those vendors, all good.

But could you put this in somewhat of a—some context for us? Is it a 50 percent increase in the load, 100 percent increase in the load? Is it going to roll out from East Coast to West Coast? Can we ship in—like sometimes, you know, when you have a storm, all the tree companies kind of come in, and then you roll—how is that going to work?

Mr. WHEELER. Thank you, Congressman. And your constituent has identified a very real issue. I mean, I was shocked to find what the number of actual antenna erectors are. And we have to think about it in a regional approach, for instance, because you have got to represent whether you ought to be able to get scale and move a team in there and hit this area and then move on to the next area and that sort of thing.

Again, this is something we have to orchestrate. This is why all of the incentive auction issue is over, “You do not need to spend any more money,” is something I have been saying to this committee. We need to make sure we have got the money to address these problems because it is going to be hard. There are going to be challenges. We cannot scope them right now because we do not know whether it is 500 or 1,000 licenses that are going to end up being repacked.

Mr. RIGELL. All right. So I see. So you have really got to have the auction to get a full grasp of just the physical aspect of this.

Mr. WHEELER. Yes, sir. But Commissioner Pai and I are in violent agreement on the fact that we need to have a waiver process to take care of interim things, and if there is a need to revisit it, because the realities—I mean, we are moving from dealing now with, well, here is this study. Oh, but here is this other study. You know, pick which study you want to go with—we are going to have a real life study, and we are going to know—

Mr. RIGELL. Finally, until that light turns red right there, I do want to ask you, you mentioned something that was very troubling, not about the agency there, but about—Sandy was saying about listening in. Was that—

Mr. WHEELER. Samsung.

Mr. RIGELL. Samsung.

Mr. WHEELER. Yes, sir.

Mr. RIGELL. Sorry. Okay, Samsung. In a literal sense, what—

Mr. WHEELER. Yes, sir.

Mr. RIGELL. Well, my time is up, but I would like to—

Mr. WHEELER. I will be happy to talk to you off the record about that.

Mr. RIGELL. Okay. Thank you, mister. Thank you.

Mr. CRENSHAW. Well, we have had one round of questions. We are going to vote very, very shortly, and it is about an hour’s worth of votes. So I think it would be hard to keep our witnesses here and then turn around and come back an hour later. So let’s keep going and we will go as far as we can. And real quick, my time ran out, and I did not get a chance to ask Commissioner Pai to comment on this whole issue about rate regulation. I think we got

some interesting thoughts from the chairman. Give us your take on this situation.

Mr. PAI. Thanks for the question, Mr. Chairman. This is a pretty remarkable issue. President Obama, on November 10th, when he instructed the FCC to adopt Title 2, said, "But I do not want you to regulate rates." The chairman said to this committee and to others, publicly, "The FCC is not going to regulate rates." Congress proposed legislation saying, "The FCC shall not regulate rates." All of a sudden, simply codifying that promise has thrown everybody into a tizzy about the new—nitty-gritty of statutory interpretation, what the meaning of "is" is.

To me, it is not that complicated. If the agency wants to forego from ex-ante and ex-post rate regulation, which is what everybody says is the case, then there is no harm, as the chairman committed to you last year, to Congress simply saying so. And I think the fact that we cannot reach an agreement on something as basic as this portends a great deal of uncertainty and regulatory activity, if not for this Commission, for some future commission that is not going to show similar restraint, either to Congress or to the American people.

Mr. CRENSHAW. Thank you for that.

Mr. BISHOP. Mr. Chairman, would you give me one more minute?

Mr. CRENSHAW. Yes, sir.

Mr. BISHOP. The prison phone call issue, which you acted on, and I think just over a week ago, of the D.C. Circuit in an order blocking the implementation of that, on putting caps on the rates. Will you guys consider, or continue to try to provide some help so the families and inmates will not be faced with these extraordinary rates that they had been prior to your implementation of that rule?

Mr. PAI. That is a great question, Congressman. Back in 2013, when the FCC addressed interstate rates, this is before Chairman Wheeler came onboard, I put a proposal on the table because I thought that the agency's order was on shaky legal foundations. A few months later, the D.C. Circuit unfortunately stayed the interstate portion of our decision. The most recent round relating to intrastate rates, I said, "Look, we need to find a bipartisan solution to this because the order we are adopting is on similarly shaky legal foundation."

Yet again, the D.C. Circuit stayed that decision. Now, the question, it seems to me, is what is ultimately going to benefit the people who are in prison and their loved ones? Is it an agency that stakes out ground that, you know, is on quicksand, or is the agency working together in a bipartisan way within the confines of the law to provide relief? I would humbly submit that it is the latter, but unfortunately, that is not the way that this proceeding has gone.

Mr. WHEELER. There is a 30-second follow-up to that. If this body, or any body, strips the FCC of its ability to regulate rates, those inmate calling rates are gone. This was the problem with what the proposal is. They go through the roof, because what the proposal said was not what I said, which was, if you want to prohibit de-facto on rates in the future, go ahead.

Whatever happened, it suddenly became all about every rate. And that means those rates go out the window. That means that the judgment about rates for video relay services go out the win-

dow. That means the judgment about paid prioritization, which is inherently a rate activity, goes out the window. All of these other ancillary things go out the window, if the FCC is stripped of its rate-making authority, which is what the proposal has been.

Mr. CRENSHAW. You know, we went back and forth with your staff over some of these issues, but I saw Commissioner Pai shake his head. Maybe you could give us your 30 seconds on this.

Mr. PAI. Mr. Chairman, just very briefly. Again, this is not complicated. First of all, the legislation would not strip the FCC of its rate-making authority in these other areas, because those areas rely, for example, with respect to mobile roaming rates, on our Title 1 authority to ensure commercial reasonableness when these arrangements are forged.

Second of all, if indeed this kind of rate regulation is off the table, then what exactly was it that the FCC committed to last year? What exactly was it that President Obama was telling the FCC to refrain from? All the Congress is doing—but you would know better than me—is simply codifying the commitment that the chairman and the President made almost over a year ago. And this should not be that difficult. And I think that the language that the House Energy and Commerce Committee came up with was sufficient.

I think that, you know, the entire debate over this appropriations language highlights the fact that rate regulation is on the table. It is within the FCC's order, both ex-post, and I would argue ex-ante potentially, and there is no way to firmly shut the door on it unless Congress speaks through legislation.

Mr. CRENSHAW. Well, thank you for that. My time is expired now. I was going to yield some time to Mr. Graves, but I do not have any more time. So, Mr. Serrano, if you want to yield any time to Mr. Graves, you can.

Mr. SERRANO. I may. Your comment, Chairman Wheeler, got Mr. Rigell to ask a question which I was going to ask. So the old line that we used to hear when somebody was still asleep, and you left them on the phone, or you are watching TV and said, "No, the TV's watching me," is now for real? The TV is watching you? The TV is listening to you?

And secondly, have you been called in, has the FCC been called in, to the Apple versus FBI controversy? And lastly, what role do you play in the privacy issue for consumers, if at all?

Mr. WHEELER. So on the first issue of, have we been—I guess it was second issue, if we have been called in on Apple, no. That is above our pay grade here. We are not a national security or anti-terrorism agency.

Mr. SERRANO. Yeah, but the privacy issue.

Mr. WHEELER. I will come to the privacy issue in a second.

Mr. SERRANO. Right.

Mr. WHEELER. The second issue of about what smart TVs can do. Yes, I mean, there is a multitude of devices in your house that can listen to what is going on. You know, the Echo that Commissioner Pai talked about does that all the time, the Amazon Echo. Samsung put out, I think appropriately, this notice that people should not talk in front of their digital television set because it can hear and store what they are saying. And this goes to the heart

of the privacy issue, because last week, we proposed—and the Commission will vote on a notice of proposed rule-making, hopefully later this month, on the 31st, that consumers have the right to determine whether or not their information is being used by the networks that are carrying that information; that when I go to Comcast or AT&T or Verizon or whomever, to take me to the Internet, they know everything about what I am doing.

They know that I am going to health sites. They know that I am going to financial sites. They know that I am, you know, whatever the case may be. They know all the details about me, and in many instances can actually look at what is inside the message. And so what we were saying is that we think the consumer has the right to say, “Do I want that information looked at?” And this if they do, terrific. The company can go. Because what they do is they package that information up, and they sell it to advertisers, or they sell it to insurance companies, or they sell it to others who—because, you know, information is the currency of the 21st century.

Data is the currency of the 21st century. And so we are not saying to the carriers, “You cannot do that.” We are just saying, “It is not your information, it is the consumers’ information, and the consumer ought to have the right to say yes or no as to whether you do it.” And so, I mean, that is a key activity that we are going to be voting on, to open a proposed rule-making later this month.

Mr. SERRANO. But why would you not tell the company, “You cannot do that”? I mean, when people bought a TV set—we all bought TV sets—we did not know that they were being watched or listened to. You know, the old line, you know, “What do you have to hide?” That is not the point. We were built as a society, you know, that does not give you some privacy.

Mr. WHEELER. So two things. First of all, the TV set.

Mr. SERRANO. I mean, I do not want that presidential candidate that I have been saying his, you know, been recording what I have been saying about him because he might get back at me.

Mr. WHEELER. I do not want to get these two issues conflated. The TV set is something that the FTC oversees. What we have is the information in and out of the TV set, if you will, and what the network does there. And I can think that, yes, there are many consumers who will want to have this, because they will want to have the ability for advertisements to show up that say, “Hey, I see you have been going to this website looking at hotels in Paris. Here is Air France’s special airfare,” or whatever the case may be. And the carriers want to sell that. The consumer may want to have the benefit of that, and that is terrific. I just think it is the consumer who ought to say, “Excuse me.” It is the consumer’s information to decide, not the carrier’s information, and that there will be room for both of them to work things out.

Mr. CRENSHAW. Mr. Graves has a quick question. We are voting now. And as the members know, they do not leave the board open as long as they used to. So if members have other questions, please feel free to submit them to the record. We will have them addressed.

Mr. SERRANO. I have questions for the record.

Mr. CRENSHAW. Mr. Graves.

Mr. GRAVES. Thank you, Mr. Chairman. First, I would like to submit for the record, if there is not any objection, a letter that was sent to the full committee and to this subcommittee that very well states some of the concerns or objections to the discussion we have had as it relates to set-top boxes by some organizations that are strong advocates of taxpayers. So if there is no objection, I would like to submit that for the record, and then make an additional point or two that I think brings clarity to it for me a little bit more, and that it seems very clear that if this rule proceeds, that there will be additional expenses or costs for consumers, that there will be an additional device required potentially for consumers, and that as well, Internet parties, third parties are not under the same rules and regulations as current industries that you currently regulate. Is that accurate in all cases, which I just stated?

[The information follows:]

March 14, 2016

Rep. Hal Rogers
Chairman, Appropriations Committee

Ander Crenshaw
Chairman, Subcommittee on Financial Services and General Government

United States House of Representatives
H-305
Washington, DC 20515

Dear Chairman Rogers, and Chairman Crenshaw

We write to express strong opposition to the FCC's flawed plan for invasive new set-top-box technology mandates that will freeze obsolete technology in place, drive up consumer costs, create an unfair playing field on privacy regulation, and undermine the vibrant competition and innovation that exist in the market for video and television today. When you look carefully at these rules, you see that the FCC's stated concern for the cost of consumer set-top boxes is a smokescreen – since the new box and second device required by **this proposal will almost certainly cost consumers even more** – and they are actually little more than naked cronyism, propping up a few favored corporate interests at the expense of consumers and the marketplace itself.

1. *A solution in search of a problem.* Anyone who looks at the video market today sees vibrant competition and thriving innovation and consumer choice, even FCC Chairman Wheeler himself who recently said “Thanks to advances in technology, American consumers enjoy unprecedented choice in how they view entertainment, news and sports programming. You can pretty much watch what you want, where you want, when you want.” New devices and services like Netflix, Roku, Apple TV and dozens more give viewers unprecedented options and choice, and revolutionary digital apps allow some consumers to access their entire pay TV package without a box at all, while others turn to apps like HBO Now or MLB Gameday to “cut the cord” and buy only the specific programming they want. Home gateways and Smart TVs have brought viewers universal, cross-platform search – which Chairman Wheeler inexplicably claims is the core innovation his new rule will bring about. This market is working – and the last thing it needs is a massive regulatory subsidy to a few companies that would undermine the healthy competition that is underway and lock in a one-size-fits-all solution that will stifle innovation and change.

2. *An obsolete second box in every home – with consumers footing the bill.* While Chairman Wheeler claims he wants to “unlock the box,” **this rule actually locks the existing box-based delivery model in place** – at a time when the market is experimenting with dozens of new approaches and many providers are moving to

“boxless” systems altogether. Even the strongest proponents of this rule, like Public Knowledge, admit the rule would require some kind of new device in every home and that “it’s just sort of an open question of exactly what that device would be.” And consumers will end up paying for this new adapter box, whatever new Google box or other interface they purchase at retail, and the back-office costs of reworking networks to make the system function – ***driving up bills even for consumers who do not need or want the new FCC-mandated system.***

3. *Unfair regulatory advantages.* The rules requiring existing TV providers to open up their programming feeds for new entrants like Google to use in launching competing services of their own. In other words, instead of negotiating for programming rights to launch their own services – like Netflix, Apple TV, Roku, Hulu, and every other new service has done – these latecomers to the market want to free ride off the programming libraries assembled by existing cable and satellite TV companies. You don’t have to like the cable and satellite companies to think that kind of giveaway and attack on private competition is grossly unfair and out of bounds in a free economy.

4. *Breaching copyrights and destroying the economics of programming.* Programmers depend upon their ability to negotiate with the companies who distribute their creative works on vital terms like schedule, channel, placement, advertising rights, cross-promotion, digital and on-demand access and more. But the FCC rule makes those agreements impossible to enforce by forcibly transferring programming to new device companies without requiring them to negotiate or pay for rights or honor any of these vital terms. A wide range of ***programmers from the largest to the smallest have complained that hijacking their work in this way – and without any compensation at all – makes it impossible for them to reach and grow their audiences and earn fair rewards from the shows they have invested a great deal to create. All of these changes would harm the almost two million Americans who work in the movie and television production business, and ultimately the consumer,*** who will be deprived of quality and diverse programming as the money that supports its creation is siphoned out to companies that don’t pay a dime to the creators for the privilege of distributing their content. ***Chairman Wheeler has claimed many times that the regulations will protect against these predicted harms, but there are no such protections to be found in the actual text of the proposed rules.*** That kind of misleading spin is not worthy of the FCC Chairman, who should at least have the forthrightness to address concerns about his proposal honestly and head on.

5. *A privacy double-standard.* Today, cable and satellite providers are subject to rigid privacy restrictions under Title VI of the Communications Act. Regardless of what one thinks about the wisdom of this law, its privacy constraints do not apply to the companies who would gain influence over TV viewing under the AllVid plan. The FCC admits it has no authority to directly regulate how those companies collect and use viewer data, and proposes a vague “self certification” system under which such companies would promise to abide by the same prescriptive rules that

govern cable and satellite providers. ***Because the FCC cannot enforce such promises, however, its plan would create an unfair playing field and confound consumers' reasonable expectations about how their viewing habits can now be monetized.***

We urge you to give Chairman Wheeler's proposed set top box regulations the strictest possible scrutiny. American consumers have a great deal to lose if this flawed plan is unleashed to destroy the healthy and vital market for video and TV.

Sincerely,

60 Plus

American Conservative Union

American Majority

Americans for Tax Reform

Center for Individual Freedom

Competitive Enterprise Institute

Council for Citizens Against Government Waste

Discovery Institute

Institute for Policy Innovation

Less Government

Property Rights Alliance

Taxpayers Protection Alliance

Mr. PAI. That is, Congressman, accurate, too. And it also bleeds over to the privacy as well, if I might, with your indulgence, the FCC is proposing one set of privacy regulations for Internet service providers. But if you are a consumer, you have a “uniform expectation of privacy,” as the Chairman aptly put it before the House Energy and Commerce Committee last November.

Unfortunately, the FCC, has now caused a problem because previously the Federal Trade Commission had a uniform set of rules in this ecosystem. Now, we are going to regulate one segment of the industry one way, the FTC presumably is going to regulate the rest of the industry another way, and there is going to be a hodgepodge of regulation.

Mr. GRAVES. Great. Thank you.

Mr. WHEELER. It is not correct that a second box is going to be required. That was a proposal from 2010. Those who do not like this have been trying to spread that—actually, what is going to happen is you will have fewer boxes. You can have no box, where you can buy your own box, where you can and do not have to pay the \$10 a month anymore. You can buy a box for \$50 at Best Buy.

Mr. GRAVES. Is it possible that you will have to have a new box? And if you did have a new box, that would cost the consumer?

Mr. WHEELER. You will not have to have a new box. Let me just be real specific. One, you can keep the box that you have, and you can keep paying month after month after month on that box, even after it is long paid off. Or, two, you can get your own box, as I say, at Best Buy for \$50, and pay once \$50, and then the sixth month be clean. There is not a need to have two boxes to deliver one service.

Mr. GRAVES. Any other thoughts on that?

Mr. PAI. Congressman, I take a different view. I think that the great likelihood is that you will have to have a second box. And the reason is that if you were the existing MVBD, the video programming distributor, either you will have to re-architect your network in order to allow this third-party device to connect with it, right, which will generate a tremendous amount of cost that is going to be passed on to you, the consumer, or, you will have to have all these additional boxes that will have to be flooding into consumers' homes. There is just no way around it, and that is part of the reason—

Mr. GRAVES. More remote controls, too. Right?

Mr. WHEELER. We are going to go from multiple remote controls to one remote control. I mean, your point is spot on. The reason you have multiple remote controls today is you have got a controller for your smart TV, and you have got a controller for your cable.

Mr. GRAVES. The Chairman is watching the clock over here, too.

Mr. WHEELER. But you understand what I am saying. If you can take all of those and put them together into one box, one box, not one additional box. One box. That is what we are saying. The cable operators need to be able to allow their data, not their programming content. That goes untouched. Their data to operate another box so you can integrate them together. There is no need for a second box.

Mr. GRAVES. Sounds like a presidential debate from years gone by. Black boxes. All right. Thank you, gentlemen.

Mr. CRENSHAW. Sounds like there is a difference of opinion, there. But again, let me thank the witnesses for being here. I appreciate the work you do. This meeting is adjourned.

Financial Services and General Government Subcommittee
Hearing on the Federal Communications Commission
For Chairman Tom Wheeler

Questions for the Record Submitted by Chairman Ander Crenshaw

Budget

Last year, the FCC asked for a \$25 million transfer from the Universal Service Fund, which Congress did not approve, and this year the FCC is asking for a \$9.5 million transfer.

Question: Why is the Commission raiding the Universal Service Fund to pay for the operations of the Commission?

Answer: The FY 2017 request for the transfer of USF funds of \$9.5 million is a targeted request with a focus on preventing and reducing improper payments and identifying and punishing wrongdoers through enforcement action. Through these efforts, we expect a valuable return on investment to the USF and to the Federal government. This realignment would reduce the Section 9 regulatory fee burden on licensees with no USF relationship and provide greater parity in the regulatory fee structure. As a result of this transfer, USF will pay these costs instead of requiring entities such as small, local broadcasters and marine licensees to pay for USF FTE activities at the Commission.

Question: The Commission's budget outlines the new initiatives that the Commission would like to spend the requested increase on, but only \$1.6 million of that is for reducing USF improper payments.

What exactly does the Commission plan to spend the remaining \$7.9 million in USF funding on?

Answer: If the Committee grants the requested transfer of \$9,500,000 from the USF in FY 2017, \$7.9 million of the transfer would allow the Commission to cover salaries and expenses related to the oversight of the USF programs for the Enforcement Bureau and for the Office of Managing Director.

Both the Enforcement Bureau and Office of Managing Director play key roles in overseeing the USF funds and working with the Universal Service Administrative Company (USAC) on program implementation. These oversight activities include identifying, preventing, eliminating, and penalizing activities that undermine the integrity of the USF programs, in addition to recovery of funds that should not have been disbursed due to rule violations or other forms of improper payments.

As noted in the question, the remaining \$1.6 million of the requested transfer would be used to fund improvements to the analytical tools available to the FCC's Enforcement Bureau to increase their capabilities to identify, prevent, and detect improper payments in the USF programs. In time, it is expected that these additional investments will return substantially more than they cost

in the form of reduced and recovered improper payments, as well as improved improper payment identification and mitigation.

Question: Doesn't the Universal Service Administrative Company (USAC), who administers the USF, and the FCC Inspector General already audit USF distributions for improper payments?

Answer: USAC and the FCC's Office of Inspector General have important but separate roles with regard to FCC management in the oversight of USF. While the FCC OIG and USAC both conduct audits of USF beneficiaries and contributors, program implementation and oversight consists of several operational elements beyond audits.

As discussed above, if the Committee grants the requested transfer of \$9,500,000 from the USF in FY 2017, the Commission would be able to cover costs related to the oversight of the USF programs for the Enforcement Bureau and for the Office of Managing Director. The FCC's Enforcement Bureau and Office of Managing Director play key roles in overseeing the USF funds and working with USAC on program implementation. These oversight activities include identifying, preventing, eliminating, and penalizing activities that undermine the integrity of the USF programs, in addition to recovery of funds that should not have been disbursed due to rule violations or other forms of improper payments.

In the response below, we discuss in greater detail the different roles and responsibilities of FCC management versus USAC's management and the FCC OIG.

Question: Why can't USAC or the OIG fund this effort out of their operations? How is the \$9.5 million request not duplicative?

Answer: The FCC's management, USAC's management, and the FCC's Office of Inspector General all have different roles when it comes to administering and overseeing the USF programs. The request is not duplicative and reflects the work performed by the FCC's Enforcement Bureau and Office of Managing Director.

The FCC's management teams oversee USAC's operations, including financial management, information technology, acquisitions, program disbursements, and contributions. The FCC established USAC, and USAC's authority to operate the USF programs stems directly from the FCC's rules as well as other policy guidance that the FCC provides to USAC through directives and regular consultations directly between staff.

Importantly, the FCC's Enforcement Bureau is responsible for investigating potential rules violations, including in the USF program. The funds that the FCC has requested for the transfer will allow the FCC to fund this important staff work from the USF fund directly, rather than regulatory fees.

Finally, the OIG is wholly independent of FCC and USAC's management. The OIG's USF focus is on beneficiary and contributor audits and then working with law enforcement to pursue criminal and civil penalties as warranted. The FCC's management and USAC's management coordinate with OIG to avoid duplication of audit efforts, and if FCC or USAC management

become aware of any possible fraud in USF, the matter is referred to OIG to serve as the primary lead on investigating the fraud.

FTE totals across the Commission remain relatively flat overall and most Bureaus and Offices only go up or down a few FTEs or stay flat.

Question: Why is there a large increase in FTEs for the Office of the Managing Director (10 FTE)?

Answer: The Office of the Managing Director had 206 FTEs as of September 30, 2015. The number of FTEs projected for FY 2016 for the Office of the Managing Director is 190 FTEs or a reduction of 16 FTEs from FY 2015. The number projected for FY 2017 is 201 or a reduction of 5 from FY 2015, or an increase of eleven from FY 2016.

The increased FTEs from FY 2016 to FY 2017 is an estimate and is primarily a result of OMD's role in the Incentive Auction TV Broadcasters Repacking as well as potential hiring needs for information technology and acquisition staff. This incentive auction effort consists of tasks such as approving and making payments to TV Broadcasters, ensuring an efficient and effective internal control environment for processing of TV Broadcaster payments. OMD also will be performing work to ensure no waste, fraud or abuse in the TV Broadcaster Relocation Fund and performing work to ensure no improper payments are made to TV Broadcasters.

Headquarters Move

The Commission is requesting \$16 million in FY17 to move or consolidate the current headquarters space.

Question: Will the FCC be moving to a new location or consolidating the current headquarters?

Answer: GSA is conducting a full and open competitive procurement, and the FCC will not know the outcome until GSA makes an award.

Question: If this decision has not been made yet, when will a decision be finalized?

Answer: GSA is conducting the procurement, and due to protests, GSA has been precluded from making an award. Currently, an offeror has filed with the Court of Federal Claims on the matter. Due to the pending matter before the Court, GSA is unable to make the award at this juncture. We will keep the Committee apprised in this matter.

Question: What will the \$16 million be used for in FY 2017?

Answer: The funds will be utilized for the procurement of planning services, personal property (furniture, fixtures and equipment), and moving services.

Auction Funding

Congress has given increases to the auction administration cap for the last 5 years specifically for the recent AWS (Advanced Wireless Services) and incentive auction.

Question: What major auctions are in the pipeline for fiscal year 2017?

Answer: The Commission appreciates that the Appropriations Committee has worked closely with us to provide additional auction funding when needed in recent years.

There are several auctions that the Commission plans to hold following the completion of the Incentive Auction, although the specific dates have not been determined. Near-term future auctions include an auction of over 520,000 Priority Access Licenses in the 3.5 GHz Citizens Broadband Radio Service, two FM auctions, a re-auction of 200 AWS-3 licenses that remain in the FCC inventory, and additional future auctions as a result of the Commission's work to make high-frequency spectrum available for new flexible use wireless broadband services through its Spectrum Frontiers proceeding.

The Commission is working to replace its aging auctions platform with a more flexible system that can more readily accommodate innovative auction designs without costly and time-consuming software development, while at the same time making essential security updates and other incremental changes to the existing platform as necessary to hold some of these auctions in the nearer term.

Up until fiscal year 2012, the Commission was able to operate within an \$85 million cap for auction administration and that was enough to cover all auction administration needs.

Question: Why has the Commission rolled the increases for the incentive and AWS auctions into its base request?

Answer: The work for the incentive and AWS auctions is ongoing and significant efforts remain to complete both of these auctions. For example, the TV Broadcasters Repacking will begin after the incentive auction ends, and run for over three years. Auction funds will be used to pay the fund administrator for repacking TV Broadcasters, testing internal controls at the fund administrator, optimizing new channel assignments for stations on the air, optimizing relocation to prevent consumers losing access, optimizing displacement of Low Power Television (LPTV) and consumer outreach for repacking.

Importantly, the 10 year, 85 million cap prevented the Commission from upgrading its current auction systems to reflect IT developments in cybersecurity and new technologies. Our FY17 request reflects an effort to bring all auctions systems up to date and ensure a solid foundation for the years ahead.

Incentive Auction

We have heard concerns from broadcasters about the 39 month timeline for repacking and moving stations.

Question: How confident are you that that timeline will be enough time for all the work you all need to do?

Answer: We believe that a 39-month transition period is sufficient for stations to apply for a construction permit (3 months) and move to their new channels (36-month Construction Period), while also enabling forward auction winners to access their newly acquired spectrum as quickly as possible. The appeals court unanimously upheld the 39-month transition period.

A longer transition period would delay access by forward auction bidders to the spectrum they won in the auction. That in turn would depress forward-auction participation or the amounts that forward auction participants are willing to bid for the spectrum. The auction would clear less spectrum, and the Commission would return less money to the U.S. Treasury.

One of the Commission's primary goals in planning the post-auction transition is to allow stations sufficient time to move to their new channels in order to minimize disruptions of service to viewers. To that end, as directed by the Commission, staff is developing a transition schedule that will maximize the efficiency of this transition and minimize service disruptions. The transition schedule will take into account how many stations actually need to be repacked, and the specific characteristics of each, in determining the repacking schedule.

The Commission has been working closely with broadcasters to get important input from the industry on planning a successful transition. We have also had discussions with representatives of the wireless industry, who obviously have a stake in an efficient transition process. We anticipate further interaction with all affected stakeholders as we develop and refine this transition plan.

I would like to reiterate that the Commission's ability to complete the post-auction transition in a timely fashion will require full funding of the Commission's auction appropriation in order to ensure adequate funds for the numerous auction-related responsibilities that arise after the completion of the auction, including optimizing the construction schedule for stations moving to new channels, administering the reimbursement fund to ensure timely payments, consumer education, and processing applications.

Question: Will the Commission consider waivers, if needed?

Answer: Yes.

Question: How will the waiver process work?

Answer: While the Commission believes that a 39-month transition period is sufficient, we recognize that some stations may encounter unexpected difficulties or delays. For this reason, the transition framework gives stations every opportunity to remain on the air, even if time runs short due to unforeseen circumstances. To assist stations, the Commission will permit six-month extensions for stations that, for reasons beyond their control, cannot complete the modifications to their facilities during their construction period.

Additionally, special temporary authority (STA) may be granted to operate on a new channel using a temporary facility while they complete their tower modifications. This STA process worked well during the DTV transition, and is supported by broadcasters. Eligible broadcasters can also request special temporary authority to operate on a channel in the TV band that is available because it was relinquished by a winning bidder in the auction.

Rate Regulation

At our FY 2017 FCC hearing you agreed to provide the Committee technical assistance drafting the rate regulation prohibition.

Question: Will you provide technical assistance to this Committee in the next four weeks?

Answer: We provided the following language to the Financial Services and General Government staff on March 29, 2016 in compliance with my promise to do so within two weeks of my initial testimony:

The Federal Communications Commission shall not reverse the forbearance granted in the Report and Order on Remand, Declaratory Ruling, and Order that was adopted by the Commission on February 26, 2015 (FCC 15-24) to the extent that the Order forbears from application, in all or part, of sections 201-205 of the Communications Act of 1934 to broadband Internet access service, as that term is defined in 47 C.F.R. section 8.2(a).

I have directed the Commission's staff to continue providing any additional assistance that the Committee requires with regard to this language.

Question: Why was your staff unable to provide this Committee with technical assistance when asked in June of 2016 last year on drafting the rate regulation prohibition?

Answer: The delay reflected difficulty in drafting language that was appropriately tailored to achieving the goal of prohibiting prescriptive rate regulation while ensuring that other Commission rules remained unaffected. Staff reviewed the Committee's initial language and determined that it would have negatively affected a broad range of Commission rules, including the Open Internet rules. Commission staff communicated to the Committee staff its concerns. After a renewed technical assistance request and continued internal discussion, Commission staff

provided tailored text to the Committee staff during the Omnibus process. We were then informed that the Committee would not use the language that the Commission provided.

Cable Set-Top Box Rule

The Commission recently voted for a proposed rulemaking on cable set-top boxes to establish open standards for third party manufacturers and software developers to access pay-tv content. President Obama's Executive Order 13563 states: during rulemakings agencies "must take into account benefits and costs, both quantitative and qualitative."

Question: Did the Commission conduct a cost-benefit analysis related to the proposed set-top box rules?

Answer: The NPRM seeks comment generally on the relative benefits and costs of the proposed rules as well as alternative approaches. We note that in enacting Section 629 of the Communications Act, and requiring the Commission to adopt implementing rules, Congress made clear its judgment that consumers would benefit from rules designed to assure the commercial availability of retail navigation solutions.

Question: If not, how can the FCC know if consumers are actually going to see cost-savings?

Answer: We expect to see comments in this regard and to consider all related cost-benefit issues prior to adoption of a final order.

Question: If not, will the Commission do a cost-benefit analysis before adopting any rules?

Answer: We expect to see comments in this regard and to consider all related cost-benefit issues prior to adoption of a final order.

Question: How difficult will it be for cable operators to implement FCC's proposals on their networks? Please provide a time and cost estimate.

Answer: The proposals in the NPRM are designed to give MVPDs as much flexibility as possible to achieve Section 629's mandate. For example:

- The Commission's proposal does not require there to be an additional set-top box in the home.
- Similarly, there is nothing in the proposal that requires MVPDs to change the way that they provide subscribers access to their programming (i.e., through an app or through a set-top box).
- The NPRM seeks comment on whether the MVPD's proprietary app approach satisfies the mandate of Section 629 and its relative costs and benefits.
- The NPRM seeks comment on what work needs to be done to implement the proposed rules and invites comment on the appropriate time period for compliance.

- The NPRM specifically asks how the proposed rules could affect small MVPDS and proposes to exempt all analog cable systems from the new requirements and seeks comment on the American Cable Association's proposal to exempt MVPDs serving one million or fewer subscribers from any rules.
- The NPRM seeks comment on how the Commission can ensure that any rules adopted are not overly burdensome to MVPDs.

Question: Will they have to significantly reconfigure their networks?

Answer: The NPRM states that the intent is to give the MVPD the discretion to decide whether to modify its system architecture. This is about choice. In lieu of a government mandate, which might impede innovation, the proposal provides for all stakeholders to rely on any published, transparent format that conforms to specifications set by an independent open standards body. The proposal identifies five characteristics that must be met by an independent standards body: openness in membership, a balance of interests, due process, an appeals process, and consensus.

By not adopting a tech mandate, the NPRM would allow MVPDs to readily incorporate new standards as technology evolves. Whether or not, or the extent to which, reconfiguration is necessary will be the result of the standards that are set through this independent standards process.

Question: How can the Commission's proposal free consumers from leasing a set-top box? How could the proposal do away with the need to use a box to access cable programming at all?

Answer: The proposal is intended to create innovation in the devices, software and apps that consumers use to access pay-TV services including those developed by pay-TV providers. The proposal would unlock the necessary information for innovators of all kinds, to develop new technologies for accessing video content. If a consumer chooses to use an app or software to access the programming they subscribe to they could no longer need to lease or purchase a set top box. The proposal seeks to give consumers this choice, which they do not have today. The fact is that 99% of pay-TV customers still rent a box from their provider, paying \$231 a year on average, because the current market is not competitive.

Question: How will the Commission ensure this proposal will not stifle innovation that's been occurring in the set top box market?

Answer: This proposal is about one thing: consumer choice. The proposal is intended to pave the way for software, devices and other innovative solutions to compete with the set-top boxes that a majority of consumers must lease today. As I have mentioned above, the proposal seeks to encourage innovation in devices, software and apps, including those developed recently by pay-TV providers.

It is important to note that having a choice between a box from your pay TV provider and an app from your pay-TV provider is not actually a choice. The pay-TV provider remains in complete control of how you access the content you pay for. The proposal would allow innovators,

including current MVPDs, to create and consumers to decide. Competition drives innovation, which drives choice, and that is a good thing for consumers.

Question: How will you ensure that cable and third-party providers will be able to continue innovating in this space?

Answer: The proposal is intended to pave the way for software, devices and other innovative solutions to compete with the set-top boxes that a majority of consumers must lease today. As I have mentioned above, the proposal seeks to encourage innovation in devices, software and apps, including those developed recently by pay-TV providers. The proposal would allow innovators, including current MVPDs, to create and consumers to decide. Competition drives innovation, which drives choice, and that is a good thing for consumers.

Question: Do you think the app-based proposals by cable and others were adequately addresses in the Notice of Proposed Rulemaking?

Answer: Yes, the NPRM seeks comment on the MVPDs' app-based proposals and particularly whether such an approach would satisfy Section 629.

Question: How long will it take for consumers to no longer see a set-top box rental fee on their cable bills?

Answer: Our overarching goal is to fulfill the mandate of Section 629 and ensure that consumers have choice as to how they access their video programming. Our aim is to open up the market so that consumers have a choice of using a device or an app. At this time, without a fully developed record it is difficult to estimate a time when new devices or apps may be available.

Joint Sales Agreements (JSAs)

The 2016 Omnibus Appropriations bill included language to roll back the FCC's Joint Sales Agreement rule for 10 years to ensure that existing broadcast JSAs can continue to operate.

Question: Why does the Commission believe it should require JSAs to dissolve if there is a license transfer?

Answer: Under the Commission's rules, following a license transfer for a station where the former licensee had previously entered into a grandfathered Joint Sales Agreement (JSA), the stations that are parties to any JSA with respect to that station must comply with the numerical ownership limits of the Commission's generally applicable Local Television Ownership Rule. If the JSA is for less than 15% of the brokered station's advertising time, the JSA does not create an attributable interest and raises no issues under that rule regardless of the size of the market. If the JSA involves more than 15% of the brokered station's advertising time, the station combination resulting from the transaction would comply with the Local Television Ownership

Rule if neither station is among the top four stations in that market and there are more than eight independently owned and operated stations remaining in the market after the transaction.

As the Commission has explained, it interprets Section 628 of P.L. 114-113 as in no way inconsistent with this analysis. A JSA is a contractual agreement between “a licensee of a ‘brokered station’” and another, brokering, party. (47 C.F.R. § 73.3555 n.2(k)). When a license is sold, however, the former licensee of the station, who was the party to the original JSA, no longer has an interest in the license. The new licensee of the station is not a party to the original JSA as defined under the Commission’s rules, and any resulting new JSA was accordingly not “a joint sales agreement ... that was in effect on March 31, 2014” – the statutory requirement for the extension to apply. (P.L. 114-113 § 628).

This non-transferability of grandfathered attributable relationships is well established in Commission precedent. I recognize, however, that Members of this Committee believe that the grandfathering language should have provided a blanket exemption for JSAs in effect, even where the station ownership changes hands. I have directed my staff to work with the Committee’s staff to provide technical assistance that achieves the Committee’s goals. There are a range of issues outstanding – including how to handle grandfathering if one or more of the parties themselves no longer want to continue the JSA.

Question: Does the Commission believe it is acting in accordance with the intent of what Congress passed last year?

Answer: Yes. Section 628 of P.L. 114-113 by its terms applies to JSAs that were “in effect on March 31, 2014.” The Commission has not applied the attribution provisions of its 2014 rule to any JSA that was in effect on that date, and will not do so before September 30, 2025. The Commission’s staff will continue to work with the Committee to provide technical assistance to achieve its goals.

Question: How many JSA’s does the FCC believe will dissolve in 2017?

Answer: Unfortunately, we lack sufficient information to provide a numerical answer to this question. The Commission has not analyzed all existing JSAs and does not have information as to when those JSAs terminate by their own terms. Importantly, the FCC cannot predict what license assignment applications will be filed or granted in 2017, nor whether the parties to JSAs in those applications will seek or be granted waivers of the JSA rule on a case-by-case basis.

Broadband Consumer Privacy Proposal

Recently, the Commission released the Broadband Consumer Privacy Proposal.

Question: Why is the FCC moving forward with proposed privacy rules when the Open Internet Order is still pending in court?

Answer: The Open Internet Order went into effect last year, and in moving forward now with proposed rules, we are ensuring that all stakeholders have an opportunity to comment on this important issue.

Question: Why not wait until the FCC’s proper jurisdiction is determined by the courts, which is expected shortly?

Answer: The Open Internet Order went into effect last year, meaning that the privacy requirements of Section 222 of the Communications Act apply today to ISPs. Since those requirements have gone into effect, stakeholders have complained about a lack of certainty as to how the Commission will apply Section 222. We believe that both consumers and ISPs will benefit from greater clarity and certainty as to how the Commission will apply Section 222 in practice.

Question: If the court decides that the FCC lacks the authority to reclassify broadband as a Title II service, then how would such a decision affect the privacy proposal?

Answer: We are confident in this position, and with Title II in effect, we are focusing our resources on the current rulemaking.

You have stated that the FCC does not have jurisdiction over so-called “edge providers” like Google and Apple and that they will continue to be under the jurisdiction of the Federal Trade Commission (FTC). Instead, this new privacy rulemaking will focus only on Internet Service Providers (ISPs).

Question: How will the FCC prevent an uneven regulatory playing field in the marketplace when it comes to privacy?

Answer: The FCC’s proposal is built on well-established principles and best practices – fundamentally, the notion that consumers deserve transparency, choice, and security with respect to their personal information. Requiring ISPs to follow these principles is entirely consistent with a competitive marketplace. For instance, nothing in the proposed rules would prevent an ISP from using and sharing a customer’s personal information so long as they obtain the customer’s approval.

The privacy proposal would require ISPs to obtain opt-in consent to share consumer information with third parties.

Question: Do any other companies in the Internet ecosystem have such a requirement?

Answer: Consistent with the U.S. model of sector-specific privacy regulation, there are many instances in which a company will have to obtain a consumer’s opt-in consent to sharing of information. For example, under the Health Insurance Portability and Accountability Act (HIPAA), a doctor could not generally sell a patient’s protected health information for online

marketing (e.g., of medication for treating a patient's condition) without first obtaining the patient's written authorization.

Likewise, under the Family Educational Rights and Privacy Act (FERPA), an online tutoring service used by a school couldn't turn around and disclose students' educational records to a third-party marketer without prior parental consent. In both of these cases, the requirement for prior consent reflects a longstanding principle that looks to the context of the interaction in which a person's personally identifiable information was made available.

Question: Should other companies in the Internet ecosystem have such a requirement?

Answer: Since the Commission's legal authority is over broadband Internet access service providers, the Commission is only proposing requirements that should be applied to those services. This approach is consistent with the U.S. model of sector-specific privacy regulation, in which the Federal Trade Commission broadly addresses threats to privacy that arise from unfair or deceptive acts or practices, while more specific protections apply in other areas – such as health care, banking, education, and telecommunications.

The Telephone Consumer Protection Act (TCPA)

The FCC recently issued its Declaratory Ruling on the Telephone Consumer Protection Act (TCPA). And since then, the Commission has indicated the principle problem of the present capacity argument is that the word "present" would need to be statutorily inserted before "capacity."

Question: Why does the Commission believe the word "present" needs to be added to the statute?

Answer: The TCPA, among other things, prohibits non-emergency calls to wireless telephone numbers using an automatic telephone dialing system or a prerecorded or artificial voice without prior express consent. Under the TCPA, an "automatic telephone dialing system," often called an "autodialer," is defined as "equipment which has the capacity—(A) to store or produce telephone numbers to be called, using a random or sequential number generator; and (B) to dial such numbers."

The Commission has consistently interpreted the autodialer definition in a series of decisions since 2003 and has not recommended that the word "present" be added to that definition. In 2003, the Commission found that, in order to be considered an autodialer, the equipment need only have the *capacity* to store or produce telephone numbers, and stated that, even when dialing a fixed set of numbers, equipment may nevertheless meet the autodialer definition. Addressing a particular type of dialing equipment in 2008, the Commission applied the same reasoning and rejected an argument that such equipment could be considered an autodialer only when it randomly or sequentially generates telephone numbers but not when it dials numbers from customer telephone lists. The Commission found that the basic function of equipment meeting

the autodialer definition was the *capacity* to dial numbers without human intervention.

Most recently, in its 2015 TCPA Declaratory Ruling, the Commission reaffirmed the agency's longstanding interpretation of the autodialer definition. There, the Commission noted that it had long held that the basic functions of an autodialer are to dial numbers without human intervention and to dial thousands of numbers in a short period of time. It explained that the TCPA's use of "capacity" does not exclude equipment that lacks the "present ability" to dial randomly or sequentially.

The Commission concluded that any equipment that has the requisite "capacity" is an autodialer and is therefore subject to the TCPA's prohibition on autodialed calls to wireless numbers without prior express consent. In reaffirming this interpretation, the Commission concluded that a "present use" or "present capacity" test could render the TCPA's protections largely meaningless by ensuring that little or no modern dialing equipment would fit the statutory definition of an autodialer.

Question: Does the Commission believe under the current statute there is indication to sweep in future potential functionalities?

Telephone Consumer Protection Act (TCPA) litigation has been growing recently and rapidly. Rather than address the underlying disputes, the FCC's Declaratory Ruling from July 2015 seems to have had the opposite effect.

Answer: The Commission found in 2003 that the TCPA's autodialer definition would cover dialing equipment even as that equipment evolves, thereby allowing the TCPA to continue protecting consumers from unwanted automated calls. The FCC recognized that with the developments in calling technology, the basic function of such equipment does not change: the *capacity* to dial numbers without human intervention.

Many potential functionalities, however, would be too remote, speculative, or hypothetical to be covered by the autodialer definition. As noted above, the TCPA defines an autodialer as any device with the "capacity" to store or produce telephone numbers to be called, using a random or sequential number generator, and to dial such numbers. The Commission has found that the "capacity" of an autodialer is not limited to its present ability to perform these tasks or its current configuration, but also includes its "potential functionalities."

The Commission based this finding both on the plain meaning of "capacity" (defined as "the potential or suitability for holding, storing, or accommodating"), and on policy grounds (interpreting "capacity" as "present ability" could allow robocallers to circumvent the TCPA by, for example, segregating the storage and dialing functions of an autodialer into separate pieces of equipment, neither of which by itself has the requisite "present ability").

The Commission emphasized, however, that its interpretation was cabined by common sense, and therefore "there are outer limits to the capacity of equipment to be an autodialer." The Commission explained that "there must be more than a theoretical potential" that the equipment could be modified to satisfy the "autodialer" definition, noting, for example, that while it might

be theoretically possible to modify a rotary phone to such an extreme that it would satisfy the definition of “autodialer,” such a possibility is too attenuated to justify a finding that a rotary phone has the requisite “capacity.”

Likewise, the Commission observed that “not . . . every piece of modifiable dialing equipment that conceivably could be considered to have some capacity, however small, to store and dial telephone numbers” will be considered an “autodialer.” As an example, the Commission noted the mere addition of a speed dial button to a handset does not inherently transform it into an autodialer.

Question: Is the issue ripe for a legislative remedy if administrative actions have been unsuccessful? Does the FCC have legislative proposals to increase the clarity and certainty of the TCPA?

Answer: The TCPA empowers consumers to decide which robocalls and text messages they receive, with heightened protection for wireless consumers, for whom robocalls can be costly and particularly intrusive. Numerous parties asked the Commission to address particular questions regarding the law’s application. In resolving these questions, the 2015 TCPA Declaratory Ruling not only preserved consumers’ rights to stop unwanted robocalls, including both voice calls and texts, but also benefited good-faith callers by clarifying whether conduct violates the TCPA and by detailing simple guidance intended to assist callers in avoiding violations and consequent litigation.

The Commission’s series of orders addressing the TCPA, including 2015 Declaratory Ruling, provide guidance that should assist callers in determining what kinds of calls are consistent with the TCPA. The Commission stands ready to continue this assistance by addressing pending or future questions about the TCPA’s application. As such, we do not recommend legislative action at this time.

Cybersecurity

Your request states one of your strategic goals is to “Work with industry and government partners to enhance the cybersecurity of our nation’s critical communications infrastructure.” Your request further states that the Commission will achieve this by working with the private sector to create a “new regulatory paradigm of business-driven cyber security risk management” and by developing “risk management processes to tailor the National Institute of Standards and Technology Cyber Security Framework to the communications sector.”

Question: What does the Commission intend to do in this area?

Answer: In February, I circulated to my fellow Commissioners a Policy Statement that lays the groundwork for the FCC and industry to work together to promote cybersecurity in the communications sector. In 2014, I asked the communications industry to lead the way in creating a new paradigm for cybersecurity – one where individual companies proactively manage

cyber risks, but do so in a way that is more demonstrably effective (a “trust but verify” approach). A broad-based group of expert stakeholders then recommended a comprehensive plan for putting this new private-sector-led cybersecurity approach into action.

One of the group’s key recommendations was for individual companies to brief the FCC on a voluntary and confidential basis about cyber risks and their approach to managing these risks. The Policy Statement would implement this recommendation by creating a process for holding these meetings and the NIST Cybersecurity Framework can be a useful tool for discussing cyber risk management. The meetings will enable the FCC to work with industry to further best practices, especially among smaller communications companies that have fewer resources to devote to cyber defenses.

Question: How is the Commission not duplicating, efforts in this area from Homeland Security, DoD, NSA, etc.?

Answer: One of the FCC’s foundational missions is to preserve public safety and network security. In doing so we’ve developed a valuable repository of outage trends, impacts, and other communications reliability information collected over the years. The significant expertise and deep knowledge base of communications industry reliability factors makes us a natural partner for collaborating on cyber risk management within the communications sector.

DHS has a critical role in collecting, analyzing, and disseminating cyber threats and solutions to mitigate those threats; in doing so it provides a critical national viewpoint for cybersecurity. If adopted, the proposed cyber risk management meetings will not duplicate this exchange. They are not intended to identify or discuss specific cybersecurity incidents, but instead will focus on forward-looking executive-level assessment of cybersecurity risk based on trends identified in participants’ prior experience, and on corporate decision-making designed to address such future risks.

The Commission is uniquely positioned to support DHS’s mission through its specific knowledge of the communications market and the best management practices for proactively addressing areas of potential cybersecurity risk. The same federal advisory committee report that encouraged the industry assurance meetings also outlined a role communications companies’ use of the DHS C³ program and annual sector report. I believe these activities complement, but do not duplicate, one another.

Question: Does the Commission expect or intend to issue regulations during this or next fiscal year? If so, what would those regulations propose?

Answer: The purpose of the Policy Statement is to avoid traditional regulation for cybersecurity defense measures. For the unique challenge of cybersecurity defenses, it creates a framework for collaboration with industry instead of traditional regulation, which is the best way to further the goals of the Policy Statement.

Universal Service Fund (USF)

The Commission recently circulated a proposal to expand the Universal Service Fund Lifeline program to include broadband access and the Commission is likely to vote on this at the end of this month.

Question: How will a \$9.25 subsidy encourage companies to expand broadband to low-income areas?

Answer: In the recently adopted Lifeline Order, we take several measures to incent companies to provide low-cost broadband services supported by the Lifeline program. We are providing an expedited review process for broadband providers that want to gain entry to the program to create a competitive market for affordable broadband and we have reduced burdensome obligations on all Lifeline providers as additional incentives to provide supported broadband service at rates that will be affordable with the Lifeline subsidy. We note that there are many low-income broadband offerings in the market right now that are in line with a \$9.25/month discount. Moreover, the program will continue to support bundled voice and broadband services in addition to stand-alone broadband service in order to give flexibility to provider offerings.

Question: How is this different than Connect America Fund (CAF) or the High Cost Fund under USF?

Answer: The chief goal of the Lifeline program is affordability. By providing a monthly discount of \$9.25, the program aims to make communications services—whether it be standalone fixed broadband, a fixed voice and broadband bundle, or a mobile voice and broadband bundle—more affordable for low-income Americans. Conversely, the goal of the Connect America Fund (CAF) is deployment in high-cost, difficult to reach regions of the country. Annual CAF funding is provided to carriers in exchange for specific and defined buildout and deployment obligations in these areas.

Question: Does the FCC's proposal include a top line budget for the Lifeline program? If not, why? How does the FCC intend to keep costs within this program from ballooning?

Answer: In the recently adopted item, the Commission establishes a budget mechanism to minimize any impact on ratepayers. Specifically, the item sets a budget of \$2.25 billion, indexed to inflation, sufficient to allow for increased participation generated by support for broadband service. It is important to note that we are not increasing the basic monthly subsidy amount of \$9.25 or the number of people eligible for Lifeline; rather, we are focused on expanding available choices for Lifeline subscribers and the value delivered. Also, if spending reaches 90% of the \$2.25 billion budget, the Wireline Competition Bureau must report to the Commission about the trends and factors leading to this spending increase, and the Commission would take action as appropriate.

Question: Does the FCC expect growth in this program to increase the top line of the Fund? By how much in the next 5 to 10 years?

Answer: We believe it's likely that participation will increase, but exactly what the need will be five or ten years from now, and what the actual participation will be, is impossible to say, given technological advances and how they will affect the marketplace. That's why we will continue to evaluate Lifeline's efficacy going forward, including by revisiting standards and setting a budget that triggers an investigation by the WCB.

Field Offices

Last year, Chairman Walden and I sent a letter to you expressing our concerns with the Commission's original field office closure proposal. In 2016 the Committee approved the Commission's modified field office closure restructuring proposal.

Question: How have the changes to the original field office restructuring proposal affected the estimated savings and costs?

Answer: In April 2015, the Commission was presented with a field modernization proposal that was projected to save approximately \$9-10 million per year, primarily based on reduced labor expenses and lower costs related to the lease and maintenance of individual field offices. In July 2015, following discussions with Congress and other stakeholders, the Commission adopted a field modernization plan that is projected to save \$7-8 million per year and will continue to provide a robust enforcement presence across the country.

Question: How much does the FCC expect to save in fiscal year 2017 with the approved field office closures?

Answer: We project savings of \$7-8 million per year once the field modernization plan is fully implemented. During 2017, that savings will be offset by approximately \$2-4 million in one-time expenses associated with the implementation of the modernization plan, including personnel exit costs (e.g., employee buyouts, leave payouts), lease exit and equipment shipping costs, and expenses from the renovation of field locations in the Atlanta, San Francisco, and Columbia, Maryland areas. In addition, the FCC has committed to use some of the savings from the restructuring on upgrades to field technical equipment. We anticipate that approximately \$3 million of this savings will go towards such upgrades.

Question: FCC also estimated \$2-4 million in "one-time costs" related to restructuring. Were these costs covered in FY 2015 and 2016?

Answer: As noted above, the FCC anticipates \$2-4 million in one-time costs to implement the field modernization plan, including personnel exit costs, office-related costs such as lease buyouts, and renovations of several field offices. Although the FCC has already spent approximately \$200,000 in personnel exit costs related to FCC managers, the bulk of these projected expenses relate to bargaining unit employees represented by the National Treasury Employees Union (NTEU). As discussed below, those negotiations are ongoing and we expect

to cover the remaining one-time costs related to restructuring in FY 2017, following completion of the restructuring plan.

Question: What is the status of the field office reorganization as of now?

Answer: The FCC is poised to implement the reorganization and Reduction in Force (RIF) absent intervention by the Federal Services Impasses Panel (FSIP). Affected employees will receive RIF notices 60 days after delivery of those notices, the affected employees will be separated. The agency plans to provide RIF mitigation efforts to assist displaced field employees.

Contemporaneously with the RIF notices, the Commission will provide 120 days' notice to the General Services Administration that it intends to terminate the leases and vacate the offices scheduled for closure. The Commission will work with employees and outside contractors to inventory and dispose of equipment, documents, furniture and other material for offices scheduled to be closed. The relevant field offices should be officially closed within 120 days after issuance of the RIF notices.

We are preparing for implementation of the various measures adopted by the Commission in the Field Modernization Order, including equipment upgrades, site renovations and a mechanism for the escalation of industry complaints. Once the restructuring is complete, we plan to use the resulting savings on these initiatives.

Questions for the Record Submitted by Congressman Tom Graves

Spectrum Auctions

The request details nearly \$12 million in new spending tied to auctions. However, not all of these requests seem directly related to auction activity. For instance, the request to spend \$1.25 million on Optimization for New Spectrum Opportunities may be a worthwhile endeavor, but it does not relate to an auction.

Question: Why is this funding request in the Auctions program rather than in the Wireless Bureau?

Answer: While the Commission has successfully made a significant amount of spectrum available over the past five years, there is still a substantial amount of work ongoing to identify additional sources of auctionable spectrum to help meet the Country's growing demand for wireless broadband. This is an increasingly complex task due to the lack of spectrum that is readily available for new wireless broadband uses.

Commission staff works collaboratively with NTIA and other agencies to attempt to find opportunities to repurpose or share federal spectrum through auctions to commercial users, while

also exploring opportunities to better utilize existing non-federal spectrum. Using mathematical and economic optimization tools will help us to identify from among different potential opportunities, those that best meet several competing goals – including maximizing the amount of spectrum available for wireless broadband and protecting important federal missions – and will provide a powerful addition to our effort. Spectrum identified for licensing through the use of optimization tools will directly result in future auctions, and, therefore, will directly contribute to revenues.

Question: Why is the \$500,000 requested for new Spectrum Visualization Tools in the Auctions program?

Answer: Spectrum visualization tools would improve our ability to easily manipulate and analyze data in the Universal Licensing System as we continue to look for new sources of spectrum to make available for wireless broadband use through future auctions. These tools also would greatly improve the public's ability to evaluate and assess licensed usage rights in the spectrum, including spectrum that was previously auctioned. Spectrum is a public resource, and we strive to ensure the public has the tools necessary to understand who has the rights to use what portion of the spectrum. While this information is currently available in ULS, new tools that would allow the public to better view, understand, and analyze the data and would improve their ability to study competing uses of licensed bands, including auctioned bands, and maximize the public utility and economic benefit of such bands.

In the crosswalk for the Spectrum Auctions Program, you allocate slightly more than \$59 million in auctions funding to the Office of the Managing Director.

Question: Can you please detail for the Subcommittee how the auctions program would account for such a large portion of OMD's FY17 cost?

Answer: The Office of Managing Director provides support to the auctions program, including, information technology, financial, and administrative operations. This auctions support comprises most of the \$59 million provided by OMD. Specifically, the information technology group is responsible for any improvements, maintenance and operation and security of the FCC's two largest auction systems, Universal Licensing System (ULS) and Integrated Spectrum Auction System (ISAS).

In addition to these two systems the IT group is responsible for the Licensing and Management System (LMS) and Consolidated Database System (CDBS) which will be used for the incentive auction repacking efforts. The administrative operations group for example, includes costs for rent, physical security, and administrative support. The financial operations group for example includes costs for financial systems support and financial support, including collections and disbursement of auction funds.

Spectrum Auction Program spending on "Other services from non-Federal sources" has increased from \$10.9 million in FY14, your first year at the FCC, to a projected \$26.7 million in FY17.

Question: Please explain the reason for this growth.

Answer: The increase in the growth of “Other services from non-Federal sources” includes the incentive auction work performed by outside contractors on incentive auctions, costs for the administrator to manage the repacking of TV Broadcasters, 3.5 GHz auction development and implementation, other auction development and implementation, SAS/ESC testing for 3.5 GHz and beyond, optimization for new spectrum opportunities, spectrum visualization tools both for public facing and internal, ISAS enhancements/modifications, IV&V for all auctions related systems/changes, FCC Headquarters move/restacking, and incentive auction support for contracts.

Set-Top Boxes

Question: Under the approach proposed by the Notice of Proposed Rulemaking, will customers experience the same service to which they subscribed from their cable or satellite provider, with the guides, user interfaces, and other features comprise the distinctive service of that provider?

Answer: This proposal is about one thing: consumer choice. To ensure a competitive marketplace, as required by the Telecommunications Act of 1996, the proposal identifies three core information streams that must pass from MVPDs to the creators of competitive devices or apps:

- **Service discovery:** Information about what programming is available to the consumer, such as the channel listing and video-on-demand lineup, and what is on those channels.
- **Entitlements:** Information about what a device is allowed to do with content, such as recording.
- **Content delivery:** The video programming itself.

Therefore, the presentation of guides, user interfaces and other features may change from an MVPD to another third-party provider, but that is inherent in the choice consumers will be able to make for the technology and service they want.

Question: Are you claiming that MVPDs are not making their services available via retail devices?

Answer: A recent study revealed that 99% of MVPD consumers lease set top boxes from their MVPDs. This proposal is about one thing: consumer choice. The proposal is intended to pave the way for software, devices and other innovative solutions to compete with the set-top boxes that a majority of consumers must lease today. The proposal welcomes innovation in devices, software and apps, including those developed recently by pay-TV providers.

It's important to note that having a choice between a box from your pay-TV provider and an app from your pay-TV provider is not actually a choice. The pay-TV provider remains in complete control of how you access the content you pay for. The proposal would allow innovators,

including current MVPDs, to create and consumers to decide, allowing apps to thrive. Competition drives innovation, which drives choice, and that is a good thing for consumers.

Question: But if a customer can, for instance, buy a Roku and receive Time Warner Cable service, doesn't that provide a choice?

Answer: As noted above, having a choice between a box from your pay-TV provider and an app from your pay-TV provider is not actually a choice. The pay-TV provider remains in complete control of how you access the content you pay for, including which devices they will allow a consumer to use. Nonetheless, the NPRM does seek comment on the MVPDs' app-based proposals and particularly whether such an approach would satisfy Section 629.

You've assured the public repeatedly that the rule would not require consumers to have a second box. But no tablet or television can lock on the right satellite without special equipment in the home. Experts in networks have repeatedly advised that as a practical matter, this proposal will require an MVPD box in the home to serve retail, when today apps are taking us away from more boxes. Even Public Knowledge, one of the leading supporters of your proposal, recently acknowledged that if this rule is enacted customers will still need to lease a box from their TV provider in addition to any new device they buy at retail.

Question: Why should consumers believe otherwise when the technical standard in question hasn't even been invented yet and even your proposal's strongest supporters acknowledge the need for another device?

Answer: The Commission has a mandate under Section 629 to adopt rules to assure a competitive market for set-top boxes. In the proposal, we leave it to independent standards bodies and stakeholders to develop the framework that will be employed, rather than the Commission locking a standard in place. In lieu of a government-imposed standard, which might impede innovation, the proposal provides for all stakeholders to rely on any published, transparent format that conforms to specifications set by an independent open standards body. The proposal does acknowledge that satellite technology is different and that a device may always be needed to receive and translate a satellite signal. However, that device does not need to be in the form of a set top box. And if consumer chooses to use an app, no box will be needed at all.

Questions for the Record Submitted by Congressman Kevin Yoder

IG and FCC Fraud Reporting

Chairman Wheeler, I understand that the FCC Inspector General (IG) reports a significant increase in the number of reports about waste, fraud, and abuse. In fact, since you've taken over

as FCC Chairman, reports of waste, fraud, and abuse have skyrocketed. Last year, the IG reported that his office received over 14,000 complaints about possible fraud at the FCC and in FCC programs. This is a big jump over the 10,000 fraud complaints filed the previous year. But what's astonishing is that last year the IG received more fraud complaints than the total fraud complaints filed between 2008 and 2013 combined. I also understand that the FCC IG receives many more fraud complaints than the IGs at the FTC and the SEC.

Question: Chairman Wheeler, why is the IG receiving so many reports of fraud?

Answer: The FCC's Enforcement Bureau, Office of Managing Director, and operating Bureaus coordinate closely with the Office of Inspector General (OIG) on fraud related issues. Per FCC's operating policies, if FCC staff becomes aware of fraud (actual or potential), the matter must be referred to OIG. In addition, if the matter does result in actual fraud being identified, the FCC's OIG will work with the Department of Justice if criminal charges are to be pursued.

In recent years, the FCC's OIG has been very active in pursuing allegations of waste, fraud and abuse, particularly in connection with the FCC's Universal Service Fund (USF) programs. The OIG has cases pending with Justice Department Attorneys or Assistant U.S. Attorneys in the E-rate, Lifeline and High Cost programs, as well as in USF Contributions and auctions matters. The OIG's efforts are integral to maintaining the integrity of the FCC's programs and provide a powerful deterrent to wrongdoing, especially when combined with the impact of the FCC's Enforcement Bureau's investigations and civil penalties issued for violators of the FCC's rules.

That being said, the numbers cited in the question do not necessarily show an increase in reports of fraud in FCC related programs. The numbers referred to are from the OIG's Hotline calls, which may include allegations of fraud, but the vast majority (88.6% in FY 2015 and over 87.1% in FY 2014) were determined to lack merit for referral or further investigation.

The remaining calls that merit further action break down into three separate categories. The largest category are items that are within another agency's jurisdiction and are referred to the appropriate agency, such as the Federal Trade Commission and the Securities and Exchange Commission. For FY 2015, 6.9% of OIG Hotline calls were referred to other agencies, and in FY 2014, 6.8% were referred to other agencies.

The second largest category are matters that are actually consumer related and referred to the FCC's Consumer and Governmental Affairs Bureau (CGB). For FY 2015, 3.3% of OIG Hotline calls were referred to CGB, and in FY 2014, 5.4% were referred to CGB. Finally, the OIG refers certain cases to its Office of Investigations (OI) as possible cases for follow up. For FY 2015, 1.1% of OIG Hotline calls were referred to OI, and in FY 2014, .67% were referred to OI.

Finally, it should be noted that while we do not have specific insights into the OIG's Hotline operations because of their independence, the OIG informed us that they instituted a new voice mail systems tied to the Hotline in recent years that has allowed them to more accurately capture the number of calls received.

Question: Did the FCC IG meet with you after record high number of fraud reports in 2014? If so, what actions did the FCC take to stop fraud?

Answer: As discussed in my answer to the previous question, while the OIG has reported an increase in calls to its Hotline, those calls do not necessarily represent an increase in reports of fraud. Per FCC operating policies, when the FCC's staff becomes aware of actual or potential fraud, the FCC must refer that matter to the OIG to take the lead on the investigation.

The OIG is independent of FCC management; if the OIG is investigating a fraud matter that FCC management can take action to prevent from ongoing or assist in providing information to assist OIG, the FCC's staff and management willingly comply and help however possible. We have the same interest in deterring and preventing fraud in the FCC's programs as the OIG. Senior members of the FCC's management team meet regularly with the Inspector General and his staff to coordinate, and the OIG may raise fraud matters to them when it does not compromise an ongoing investigation.

Since the inception of my tenure, the Chairman has repeatedly emphasized the need to root out fraud, waste, and abuse in the FCC's programs and hold wrongdoers accountable. In particular, the FCC's Enforcement Bureau has brought focused attention to ensuring that USF funds are being used as intended, contributors are paying into the fund what they owe, and that those who would attempt to defraud the program are punished and banned from further participation in the program.

Question: Fraud reports to the IG reached new heights in 2015 – this suggests that the FCC isn't doing enough to stop fraud. What are you going to do to protect taxpayer resources?

Answer: As discussed in my previous answers, while the OIG has reported an increase in calls to its Hotline, those calls do not necessarily represent an increase in reports of fraud. As noted in the response above, the FCC is focused on eliminating fraud, waste, and abuse in the FCC's programs, particularly USF.

In addition to the actions of the FCC's Enforcement Bureau, I have directed overhauls of USF's E-rate and Lifeline programs, both of which have historically been targets for malfeasance. The FCC's E-rate and Lifeline modernization efforts will not only vastly improve how these programs operate, but they will ensure that the funds are used for their intended purposes by tightening the controls in the programs to prevent fraud, waste, and abuse. While the implementation of the E-rate and Lifeline modernizations are ongoing, we expect to see operational improvements, better program outcomes, and reductions in improper payments as the program improvements take hold in the coming years. As such, these efforts will not only protect USF resources, they will also improve the quality of the USF programs.

Cooperation with Congress

There have been two reports by Congressional Committees that have found that the FCC has been uncooperative with Congress. Most recently, the Senate Homeland Security & Government

Affairs Committee found that the FCC refused to provide documents that were important for the Committee's investigation. Quite frankly, this Committee has had problems getting information from the FCC as well – last year, the FCC refused to make available its experts to Appropriations Committee staff for the purpose of providing technical advice on the Open Internet issue. Refusing to provide documents to Congress is not acceptable. Refusing to make available public servants who are paid to provide technical expertise to Congress is not acceptable.

Question: Refusing to provide documents to Congress makes it look like the FCC is hiding something. What's going on here?

The FCC has fully cooperated with the House and Senate Committees investigating the FCC's *Open Internet Order*, including the Senate Homeland Security & Government Affairs Committee. In 2015, the FCC collected, reviewed, and produced to the Committees tens of thousands of pages of internal FCC records documenting the Commission's deliberations on the Open Internet proceeding.

Responding to these requests cost the FCC hundreds of attorney hours, as well as almost \$50,000 paid to an outside documents management vendor. In addition to these documents, the Commission has answered every written question and provided a number of briefings to the Committees on issues related to the *Open Internet Order*. I personally answered numerous questions about the *Open Internet Order* during my appearances before Congress last year.

With regard to the Appropriations language, Commission staff did review the Committee's initial language and determined that it would have negatively affected a broad range of Commission rules, including the Open Internet rules. Commission staff communicated to the Committee staff that it was unable to draft alternative language in a timely manner. After continued internal discussion and drafting attempts, we provided tailored text to the Committee staff during the Omnibus process. We were then informed that the Committee would not use the language that the Commission provided.

Question: What do you think we should do as appropriators to make sure the FCC cooperates fully with Congress?

Answer: I understand and appreciate your Committee's oversight responsibilities. We will continue to do our best to provide you with the information you need to perform your work.

Question: Will you commit to providing Congress and congressional staff with all the documents we seek for the remainder of your tenure as FCC Chairman?

Answer: Since I have been Chairman of the FCC, the Commission has cooperated with Congressional requests for information. We will continue to do so as long as I am in this position.

Freedom of Information Act (FOIA)

Chairman Wheeler, I'd like to get an understanding about what the FCC is doing to promote openness and transparency. For a number of years now, this Subcommittee has raised concerns about the FCC's transparency and about its performance with the FOIA, including how the FCC has "fully granted" only a small percentage of FOIA requests. I understand that the FOIA data for last year recently came out and shows some improvement, but a lot of work remains. Recently, the House Oversight & Government Reform Committee found that the FCC was shielding information from disclosure under FOIA by improperly claiming redactions.

I'll point out that the FCC PROCESS Reform Act would establish additional FOIA transparency requirements on the FCC, including publishing its FOIA logs and all its FOIA decisions.

Question: The Director of National Intelligence, the Defense Department, the Department of Homeland Security, and other agencies make their FOIA logs publicly available. It seems that the FCC still refuses to publish its FOIA logs. Is this true?

Answer: The FCC spends a great deal of time and resources complying with the Freedom of Information Act (FOIA), as well as President Obama's FOIA Memorandum, Attorney General Holder's FOIA Guidelines, and Department of Justice Office of Information Policy's (DOJ/OIP) FOIA Guidance. We maintain a FOIA page on our public website (<https://www.fcc.gov/foia>) that provides citizens with extensive information about the FOIA process and that publishes the FCC's Quarterly, Annual, and Chief FOIA Officer Reports. These reports provide a detailed analysis of how the FCC processes the more than 700 FOIA requests it receives each year.

In early 2015, the FCC joined the multi-agency FOIA online system, which allows requesters to place their requests and check the status of their requests online. The FCC currently allows requesters to check the status of their own requests, but not those of other requesters. In the future, we plan to post on the FCC FOIA webpage monthly FOIA logs that reflect the FOIAs that we have processed from FOIA Online.

Question: In 2014, this Subcommittee asked you if the FCC would publish all FOIA decisions, including those made by the FCC's bureaus and offices. This is important because the vast majority of FOIA decisions are made by the FCC's bureaus and offices. In 2014, you told the Subcommittee that the FCC would post "all FOIA decisions," although there would be some exceptions for personal privacy. But the FCC has not followed through on your promise. Please update the Committee on this issue.

Answer: The FCC is awaiting the results of the Department of Justice's Proactive Disclosure Pilot Program, which we expect to be announced in the near future. In this project, seven participating federal agencies are posting their FOIA responses online, so that they are available not just to the FOIA requester, but also to the general public. The purpose of this pilot is to assess how a "release to one, release to all" FOIA policy would impact agency operations, privacy interests, and non-government stakeholders.

While we are not participating in the pilot, we believe its results will help inform our FOIA policy. We are carefully considering the cost and effect on staff time of protecting personal information in the numerous responses that we process each year. In addition, we are weighing the concerns of some journalists that this policy would make it difficult to write “exclusive” stories about agency materials they have obtained through the FOIA process.^[1]

Broadband Speed Testing

Chairman Wheeler, since 2010, the Commission has paid more than \$3.1 million to SamKnows, a UK-based company, to assist the Commission in the development of a broadband speed testing program and application.

Question: Chairman Wheeler, was the contract with SamKnows bid competitively? Are there US-based companies capable of offering the same service you are buying from SamKnows?

Answer: The FCC competitively bid the original contract in March of 2010. Five proposals were received and SamKnows prevailed in winning the contract at that time. The FCC issued a series of follow-on contracts as sole source actions in the intervening years. Prior to issuing the current contract with SamKnows in 2015, the FCC posted public notification of its intent to continue its contract SamKnows to the Federal government’s business opportunities website (www.FedBizOpps.gov) in hopes of identifying interested parties to compete. Unfortunately, no responses were received.

Accordingly, a follow on sole-source award was issued to SamKnows. To date, the FCC has no knowledge of any interested party nor has an interested party come forward with the same or equivalent capability abilities as SamKnows to meet the FCC's requirements.

Universal Service Payments

Chairman Wheeler, in the request, you ask for a \$1.6 million increase to acquire new analytic technology to identify improper payments from the Universal Service Fund.

Question: Is the basis for this request a belief that there is a systemic problem with improper payments from the USF? If so, how large a problem do you believe this is? And if not, why do you need this additional money?

^[1] See e.g., *DOJ Official: FOIA Pilot Program is aware of some journalists' exclusivity concerns*, Washington Post, Eric Wemple Blog (July 14, 2015) (online at: <https://www.washingtonpost.com/blogs/erik-wemple/wp/2015/07/14/doj-official-foia-pilot-program-is-aware-of-some-journalists-exclusivity-concerns/>)

Answer: The FCC is committed to collecting universal service contributions and disbursing payments to program beneficiaries that are accurate, timely, properly documented, and in compliance with rules established by the FCC. In furtherance of this commitment to integrity of the USF, the FCC directed USAC to develop two separate programs, the Beneficiary and Contributor Audit Program (BCAP) and Payment Quality Assurance (PQA) program. BCAP audits are designed to measure rates of program compliance among universal service beneficiaries and contributors.

In administering the BCAP, USAC utilizes audit approaches tailored to both the distinctive features of the participant's organization and the specific amounts of money being audited. The PQA Program compliments the BCAP program and allows USAC to provide the FCC with information about improper payments to program beneficiaries, as required by statutory requirements for Federal agencies to measure and report on improper payments. Under the PQA testing program, USAC assesses specific payments made to select beneficiaries in programs subject to significant risk to determine if these payments were made in accordance with FCC rules.

Using the results of these assessments, USAC calculates estimates of improper payment rates that the FCC then uses to inform its oversight and management of the USF. The FCC publishes these estimates in its annual financial reports on its website each year. Based on the results of the BCAP and PQA programs over the past few fiscal years, the FCC has determined that the USF program would benefit from the implementation of technology to identify, detect, and prevent improper payments before they have an opportunity to occur.

By applying predictive analytics to USF claims to identify abnormal or suspicious patterns prior to payments going out, the FCC believes that it can better limit improper payments and increase the effectiveness of its efforts to detect and prevent fraud. To achieve this goal, the FCC would plan to acquire and implement data mining technology. Over time, the FCC would expect that the cost of this system would yield a significant return on investment in terms of decreased improper payments.

Universal Service Fund Transfer

Question: Do you believe it is wise to permit the Commission to repurpose Universal Service Fund monies to support general FCC operations, as has been proposed in Chairman Wheeler's budget?

Answer: The FY 2017 request for the transfer of USF funds of \$9.5 million is a targeted request with a focus on preventing and reducing improper payments and identifying and punishing wrongdoers through enforcement action. Through these efforts, we expect a valuable return on investment to the USF and to the Federal government. This realignment would reduce the Section 9 regulatory fee burden on licensees with no USF relationship and provide greater parity in the regulatory fee structure. As a result of this transfer, USF will pay these costs instead of requiring entities such as small, local broadcasters and marine licensees to pay for USF FTE activities at the Commission.

Questions for the Record Submitted by Congresswoman Jaime Herrera Beutler

Universal Service Fund

I understand that you're close to finalizing action on an order that would address the standalone broadband issue and also adopt some new limits and other measures related to universal service support for smaller rate of return providers. For all of the small companies in my district, the ACAM model is not a viable option, and the Rate of Return option has not yet been fully defined.

Question: Does this Committee have the commitment of the FCC Commissioners to work quickly and collaboratively with us and with affected stakeholders to the extent any adverse or unintended consequences arise out of the reforms?

Answer: The *Rate-of-Return Reform Order* recently adopted by the Commission was the result of a bipartisan effort, aided by the rate-of-return carriers themselves, to expand rural broadband deployment by modernizing the USF high-cost support program for rate-of-return carriers, including by providing support for standalone broadband. Importantly, no carrier is required to adopt the model; it is an *entirely voluntary* option. As implementation of the reforms in the Order progresses over the coming month, we will work to ensure that any questions and concerns from Congress, as well as any affected stakeholders, are addressed in a timely manner.

Question: Please describe in detail how the standalone broadband solution you're poised to adopt will allow rural consumers to get standalone broadband at affordable rates like their urban counterparts?

Answer: For rate-of-return carriers that do not elect model-based support, the Order modernizes the Commission's embedded cost support mechanisms to encourage broadband deployment and support standalone broadband. We annually monitor whether carriers are offering service at reasonably comparable rates, and we intend to monitor the impact of these reforms in the years ahead.

Question: How do we make sure ultimately those rural consumers are paying roughly the same rates as urban consumers regardless of whether its voice or broadband they want?

Answer: The Commission has required that as a condition of receiving high-cost support, carriers must offer voice and broadband services in supported areas at rates that are reasonably comparable to rates for similar services in urban areas. As I mentioned in my previous response, we monitor whether carriers are offering consumers broadband rates in rural areas that are reasonably comparable to rates for that same service in urban areas. The Wireline Competition Bureau conducts a survey of urban fixed voice and broadband rates and publishes a reasonable comparability benchmark for both fixed voice and broadband services based on the data

received. Support recipients are required to report that they have fixed voice and broadband rates at or below these reasonable comparability benchmarks.

Question: What impact will these changes have on Rate of Return carriers in terms of overall USF support?

Answer: In 2011, the Commission established a \$2 billion per year budget on total funding for rate-of-return carriers to ensure that the overall size of the Fund was kept within budget. The recent *Rate-of-Return Reform Order* adopts a self-effectuating mechanism to ensure that total support distributed to rate-of-return carriers pursuant to legacy mechanisms stays within that previously established budget. Though the Order provides up to an additional \$150 million annually to facilitate the voluntary path to the model for electing rate-of-return carriers, this additional funding is limited to the ten-year term of support. Accordingly, there will be no change to overall USF support as a result of this Order.

I have heard concerns that the 2014 Order used to determine the local rate floor for voice service has led to higher rates for some rural consumers in my district that are now higher than urban areas. Plus, rural customers have a much smaller local calling area than their urban counterparts, which creates an immediate disparity.

Question: Given this concern, do you plan to act on the petition of reconsideration filed by several rural associations regarding the rate floor methodology? Do any other Commissioners have thoughts regarding this matter?

Answer: In the 2011 USF/ICC Transformation Order, the Commission unanimously adopted reforms to make universal service a fairer system for all consumers and businesses. The Order includes a phase-out of excessive subsidies for basic phone service, which allowed some phone companies to charge their customers as little as \$5 a month while average urban, suburban, and even some other rural consumers, were paying over three times that amount.

The Commission determined it was inappropriate to use limited federal high-cost support to subsidize local rates beyond what is necessary to ensure reasonable comparability between urban and suburban rates and rural rates, as required by Congress. The reforms gradually eliminate these excessive subsidies to level the playing field for all consumers and contain the cost of the program, which is funded by universal service fees paid by consumers. Commission staff is currently reviewing the record in response to the Application for Review you reference.

Universal Service Fund

Last year, the FCC increased the USF budget devoted to the E-Rate program by \$1.5 billion for a total of \$3.9 billion. The FCC recently proposed increasing the spending for the Lifeline program from \$1.6 billion to \$2.25 billion indexed to inflation. Right now, the additional spending is

coming from a reserve fund, but that will run out soon. Funding for the High Cost fund, which builds networks, in rural areas has been flat.

Question: Where does the FCC expect to get the funds to cover this increase in spending and how can we know the program is both effective and efficient?

Answer: Both the E-rate and Lifeline programs are paid for by contributions to the Universal Service Fund (USF). You are correct that in 2014, the Commission raised the annual cap for annual E-rate collections to \$3.9 billion and, just recently, created a budget of \$2.5 billion for the Lifeline program, both of which are indexed to inflation. The E-rate cap and the Lifeline budgets are future-looking amounts and we do not expect the Universal Service Administrative Company (USAC) to need to collect to the E-rate cap or the Lifeline budget in the near future.

Moreover, the Commission is committed to ensuring that the universal service fund programs operate as efficiently as possible while fulfilling their missions. In adopting recent program changes, the Commission has sought to ensure that spending increases are offset to the extent possible by improved program efficiencies. For example, in modernizing the E-rate program in 2014 the Commission took a number of steps to maximize the cost-effectiveness of E-rate supported purchases, including adopting a pricing transparency requirement and several program changes that increase competitive options, and thus lower prices, for schools and libraries to meet their connectivity needs.

We expect these measures to drive down the per-megabit price paid by schools and libraries for bandwidth. The Commission also adopted per-student budget for Wi-Fi funding as a way of imposing additional pricing discipline in the program while ensuring that all eligible schools and libraries can receive support for these crucial services.

Further, the Commission made changes to the administration of the program to improve the efficiency with which funds unspent in prior years are available to meet current demand. By adopting these program changes, the Commission could size the long term needs of the program, and it raised the annual cap accordingly. However, last year we did not need to collect additional funds beyond the previous \$2.4 billion cap.

With regard to Lifeline, in addition to the recently established budget, the Commission required that the Wireline Competition Bureau report to the Commission if 90 percent of the budget is spent in a given year. This report would investigate the causes of the growth and offer recommendations for Commission action.

In this way, unlike in the past, the Commission would have an automatic mechanism to highlight the reasons for higher levels of disbursements. Moreover, to increase the effective and efficient administration of the program, we directed the USAC to procure an independent third-party to evaluate the program over the next several years as the modernization reforms are implemented.

Video

Question: Does the technology currently exist in the marketplace to meet any proposed mandate to “open” the set top box?

Answer: The Commission has a mandate under Section 629 to adopt rules to assure a competitive market for set-top boxes. For years, the technology that has been available to non-Pay TV vendors of set-top boxes is CableCARD, a physical device that consumers must obtain from their pay-TV provider and which very few companies have built compatible devices. The functions of a CableCARD (i.e. security and permission to access programming) no longer need to be contained in a physical device, software can easily accomplish these functions. Therefore, the NPRM seeks comment on how to fulfill the statutory mandate of a competitive market based on today’s technology. In the proposal, we leave it to independent standards bodies and stakeholders to develop the framework that will be employed, rather than the Commission locking a standard in place. In lieu of a government mandate, which might impede innovation, the proposal provides for all stakeholders to rely on any published, transparent format that conforms to specifications set by an independent open standards body. By not adopting a tech mandate, the proposal allows MVPDs to readily incorporate new standards as technology evolves.

Question: If so, how much does that technology cost and who bears those costs?

Answer: The cost of deploying CableCARDs is spread across MVPDs, independent device manufacturers, and consumers. We do not have exact cost information. The NPRM seeks comment generally on the relative benefits and costs of the proposed rules as well as alternative approaches, and on how the Commission can ensure that any rules we adopt are not overly burdensome to MVPDs.

Question: If not, how much will it cost to develop and implement?

Answer: As noted above, the NPRM seeks comment generally on the relative benefits and costs of the proposed rules as well as alternative approaches, and on how the Commission can ensure that any rules we adopt are not overly burdensome to MVPDs.

Question: Under your set top box plan, who will police copyright and licensing requirements for new set top box providers?

Answer: Although Section 629 does not directly address copyright and licensing, the Commission crafted its proposal to protect the agreements between MVPDs and their content partners. For instance, the NPRM proposes to require competitive devices to honor the restrictions MVPDs include in their Entitlement Data streams—including those that govern subscriber use of content, such as copy control and rights to stream content out-of-home.

The NPRM also proposes to require MVPDs to choose security systems that can ensure that negotiated licensing terms regarding subscriber use of content that are imposed by content

providers on MVPDs and included in Entitlement Data are honored by Navigation Devices. In addition, MVPDs and content creators' rights under copyright law will remain intact, as will the procedures for enforcing copyright. All copyright protections and remedies will remain in place.

The proposal is clear – we are committed to ensuring the protection of content creators' copyright. It will not interfere with the business relationships or content agreements between MVPDs and their content providers or between MVPDs and their customers. All that's changed is what device the consumer who pays for that content watches that content on.

The FCC was directed in Satellite Television Extension Act Reauthorization (STELAR) to review the good faith standard for negotiating retransmission consent agreements. I understand the FCC has an open proceeding and a number of parties commented on specific questionable broadcast negotiating tactics that unnecessarily drive up costs for rural consumers, small providers and new entrants.

Question: Where does that proceeding stand?

Answer: Comments and reply comments were due on December 1, 2015, and January 14, 2016, respectively. Staff is currently reviewing the record and preparing recommendations on the next steps for action on this proceeding.

Question: Are there tactics egregious enough to be considered per se bad faith?

Answer: Rule 76.65 currently lays out the standards for what constitutes good faith negotiation. The pending Notice of Proposed Rule Making (Docket No. 15-216) seeks comment on how we can strengthen these rules and help minimize service disruptions. Commission staff is currently reviewing the record in this proceeding and it is important to have a full analysis of that record before making any conclusions.

Questions for the Record Submitted by Congressman Mark Amodei

Set Top Boxes

On February 18, 2016 the Federal Communications Commission (FCC) proposed rules (NPRM) regarding 'set-top boxes' and Multi Video Programming Distributors (MVPD) requirements per the solicited comments of the Downloadable Security Technology Advisory Committee (DSTAC). As you know, DSTAC was chartered due to a Congressional directive for the FCC to examine these issues specifically related to set-top box security.

There has been industry wide concern about the NPRM specifically in relationship to seven areas:

- 1) Copyright – The NPRM appears to allow the FCC to dissolve contracts if they do not allow a consumer to view programming anywhere and on any device. This provision could make it difficult for content providers to negotiate fair value of their work. This could reduce content quality and presence.
- 2) Advertising – The NPRM does not appear to include language on device maker advertising policies. If device makers pre-empt or wrap around their own advertising, it could limit programmer's ability to raise revenues which fund the quality of their programming.
- 3) Channel Line-ups – The NPRM does not require device makers to honor channel line-up agreements and does not allow for those agreements to be reached through providers and device maker contracts. Channel location is an important negotiating tool for those licensing content because the location of a channel nearby other like programming can mean the success or the failure of a network as a whole or their individual programs. These negotiations give TV distributors more opportunity to extract fair programming prices and give programmers the needed benefit of location placement.
- 4) Program Diversity – The NPRM appears to heavily favor the interests of the more emergent online streaming services over smaller diverse programmers in the traditional TV world. Forcing programmers to allow their content to be streamed outside of their licensing contracts essentially allows the streaming services to get content they did not pay for which would hurt especially the smaller minority TV programmers.
- 5) Privacy – The NPRM appears to allow device makers to self-monitor their adherence to privacy laws. It also seems to place the burden of monitoring these device makers on TV providers by requiring them to not provide to non-compliant device makers.
- 6) Cost – The NPRM seems to fail to consider the cost of reengineering set-top boxes to comply with the open standard. The dramatic change in supply chain alone will cause market disruption that could dramatically increase costs to consumers, particularly, if providers are no longer able to offer free set-top boxes.
- 7) Innovation – The NPRM appears to prohibit providers from providing customers with streaming and app options for their programming unless those providers make that content available to all platforms. This kind of rule could significantly harm innovation because the ability to contract and negotiate those platforms creates a funding stream for providers to continue to innovate.

Question: In reference to privacy, who will be responsible for certifying device makers are following privacy laws? Does the rule imply that MVPD's to be the enforcing body of this law?

Answer: Let me assure you that the proposal seeks to ensure that the privacy protections that exist today will also apply to alternative navigation devices and applications. The NPRM notes

that today, competitive navigation devices such as TiVo must comply with a host of state and federal privacy protections that include various remedies for consumers. All of these protections and remedies would continue to apply under the proposal in the NPRM.

In addition to these protections, pay-TV providers abide by privacy obligations under Sections 631 and 338 of the Communications Act. These privacy obligations, among other things, prohibit pay-TV providers from disclosing personally identifiable information concerning any subscriber, including data about a subscriber's viewing habits, without the subscriber's prior written or electronic consent.

The proposal tentatively concludes that third-party device manufacturers must afford consumers the same level of protection. Specifically, the proposal tentatively concludes that manufacturers must certify they are in compliance with the same privacy obligations as pay-TV providers. The proposal asks a number of questions about how best to enforce such a requirement, including whether an independent entity should validate third-party manufacturer's certifications, whether the Commission should maintain the certifications, and what the appropriate enforcement mechanism should be if there are any lapses in compliance with any certification. Finally, the FTC submitted constructive comments suggesting a change in our proposal that would put the FTC in a position to enforce the privacy protections.

Questions for the Record Submitted by Ranking Member José E. Serrano

Move

Question: Where are you in the process of the move?

Answer: We are waiting for GSA to complete the procurement and issue the lease award. Once GSA awards the lease, the FCC will have an anticipated timeline for the effort.

Question: You're requesting another \$16.9 million in one-time move costs in appropriated dollars, which you did make us aware of last year—what will this be used for?

Answer: The Commission is requesting \$16.9 million in salaries and expense funds and \$2.7 million in auctions funds in FY 2017 for the move. The \$19.6 million request in the FCC's FY 2017 budget represents the second installment of funds that the FCC needs for the move. The FCC's FY 2016 budget request noted that the FCC would need additional funds for the move in FY 2017. The FCC will use the FY 2016 funds that it requested and received primarily for the design and construction costs for the FCC space. The FCC will use the \$19.6 million requested for FY 2017 for the procurement of planning services, personal property (furniture, fixtures and equipment), and move services.

Question: In 2015, you reduced the Commission's footprint by 56,000 square feet—how much did this reduce rental payments by?

Answer: \$3.2 million.

Question: When should the new lease be issued?

Answer: GSA is conducting the procurement, and due to protests, GSA has been precluded from making an award. Currently, an offeror has filed with the Court of Federal Claims on the matter. Due to the pending matter before the Court, GSA is unable to make the award at this time. We will keep the Committee apprised of all developments in this area.

Question: Is there a chance you could stay in the same place? If so, would you still have an even more reduced footprint?

Answer: GSA is conducting a full and open competitive procurement, and as such the incumbent lessor could submit an offer to GSA. Given that the procurement is in an open status and has not been awarded, we do not know the chances that we might stay in the same place. Regardless of location, the FCC will be housed in a smaller footprint.

Question: What will be the reduction in footprint no matter where you go?

Answer: The FCC's footprint will be reduced from 602,000 rentable square feet to 473,000 rentable square feet.

Staffing

You're not requesting an increase in your FTE level for this year, which puts the FCC at a 35 year low in staffing.

Question: Is this where you want to be?

Answer: No. We are constrained by our current budget, which has now been essentially flat-lined for seven years.

Question: What are the effects of operating at such a low staffing level?

Answer: Because we have been able to supplement information technology modernization efforts through reprogrammings and other cost savings thus far, we have been able to maintain our level of service without substantially slowing processing and other essential operations.

At this stage, we need the requested funds and the \$9.5 million USF transfer to support our core mission. The Commission's budget, except for the Office of Inspector General, has been flatly funded since FY 2010 or for 7 years, and in one of those years (FY 2013) it was reduced by \$17M for sequestration. It has been extremely challenging to operate the Commission during these years with flat or reduced funding. During this time period, to maintain operations while paying for uncontrollable costs such as pay raises and inflationary costs, the Commission has

made difficult decisions to reduce costs and to operate as efficiently and effectively as possible, while seeking to have a minimal impact on customers and to be successful in performing its mission. If flat funding continues, the Commission would be faced with problematic decisions such as not supporting all of its IT systems and potentially increased backlogs for license applications.

Information Technology

You are proposing to make \$4.7 million in Commission-wide IT upgrades, most of this is a one-time cost.

Question: How would these improvements support the FCC's mission?

Answer: The improvements referred to are twofold, \$3.9 million for new application development in a cloud environment and \$800K for geospatial efforts to support citizen centric usage, such as updating the broadband map. The FCC made great strides when it moved its Data Centers to an off-site managed facility.

The second phase is to re-write outdated applications with inadequate security protections into a full cloud environment and start to eliminate the need for our own hardware, as well as the support staff needed today to maintain legacy applications. Without moving forward on re-writing these applications we will be severely impacting our ability to provide necessary services for licensing and other essential functions. This will also impact future costs, as we will continue to see increasing costs in trying to maintain outdated and in many cases unsupported operating systems and application software.

Question: How do they complement what this Committee has funded in the past?

Answer: This request is a continuation of funding to modernize the FCC infrastructure. Because we did not receive the funding for application development previously we have had to slow our development and continue to support a level of contracting staff that would have otherwise been superfluous to our operations.

This amount is in addition to our having to continue to pay for the maintenance and support of our racks of servers in the data center. We had estimated that we would have been capable of reducing our contracting staff by another 10% when the previously requested funds for applications were brought on-line. The lack of continued funding not only degrades our ability to replace systems but increases our cyber risk and keeps the Commission from delivering the kind of service our clients would expect.

Question: What would be the consequences of not getting the funding?

Answer: The consequences would be threefold: increased risk of security failures; degradation of services; and continued increase in costs.

Lifeline Broadband

The FCC has proposed new rules to expand the Lifeline program to allow participants to choose to use the discount for either phone service or broadband access. I think this is an important step in closing the digital divide that exists in communities like mine in the Bronx.

Question: Can you talk a little bit about how this proposal will help low-income consumers access high speed internet?

Answer: The Lifeline Order that the Commission recently adopted fundamentally modernizes and restructures the program to support 21st century communications that have become critical to full participation in modern society. The item maintains the current \$9.25 per month household subsidy, but it allows low income consumers to apply that subsidy to stand-alone broadband service as well as bundled voice and data service in an effort to get more value for the subsidy.

We are focused on expanding available choices and the value delivered, and adding broadband is part of a larger package of reforms that will target the program to address the actual needs, now and in the future, of low-income consumers.

Question: Do you have any estimates of how many users of the Lifeline program might choose this benefit?

Answer: It's important for Lifeline to address the broadband affordability gap that exists now, and we believe it's likely that participation will increase. But exactly what the need will be five or ten years from now, and what the actual participation will be, is impossible to say, given technological advances and how they will affect the marketplace. That's why we will continue to evaluate Lifeline's efficacy going forward, including by revisiting standards and setting a budget cap that triggers an investigation by the WCB.

Questions for the Record Submitted by Congressman Sanford Bishop***Set Top Boxes***

Programmers have warned that device makers would be free to re-organize channels in their new interfaces, and replace channel guides altogether with search menus that could bury diverse and independent programming at the bottom of endless search results, add unapproved or additional advertising alongside their content or alongside search results, diluting the value of their television advertising, sell priority positions in their search returns and demoting the TV programmers who do not pay them, and profit from this commercial use of their work, without

permission and without paying licensing fees. These companies have already submitted comments but your Notice says “we do not believe it is necessary for us to propose any rules to address these issues.”

Question: What is the Commission’s view on how these practices impact minority and independent television networks?

Answer: I share your goal of ensuring this proposal benefits minority and independent television networks and programming. The NPRM would facilitate competition in interfaces, search functions, and integration of programming sources, all of which would provide customers with a greater ability to access minority and independent programming from a variety of sources. The goal of the proposal is to protect the arrangements made by those programmers who are currently carried on pay-TV systems, and to create new opportunities to reach consumers for those programmers that have been locked out of pay-TV systems.

Minorities in Communications Field

The FCC requires a lot of technical and technological expertise in its everyday work due to the technical nature of its regulations. Additionally, FCC employees are well positioned at the intersection of technology and public policy and can have a large impact in both fields.

Question: Can you please detail for me the steps that the Commission has taken to encourage minority participation in higher education that leads to communications careers?

Answer: Over the past several years, the FCC’s Office of Communications Business Opportunities has partnered with a number of organizations and educational institutions to encourage minority participation in communications fields. OCBO Director, Thomas Reed, working with Dr. Ronald Johnson, CEO of Solutions4Change, and former Rector of the Board of Visitors at Virginia State University (an HBCU) has participated in VSU’s Mass Communications Department’s career outreach program, speaking to students about FCC diversity policy initiatives, career opportunities at both the FCC and in the private communications and broadband sectors.

OCBO also works with the Minority Media Telecommunications Council, meeting with MMTC’s student law interns who are interested in telecommunications policy. Most recently, on March 31, 2016, Director Reed and members of OCBO’s staff met with MMTC and several African American law students from the University of Miami’s Law School to discuss OCBO’s role at the FCC and careers within the government and in the private sector generally.

In September 2015, Director Reed spoke at a Congressional Black Caucus event hosted by Talib Karim’s STEM4Us and attended by Bowie State and Howard University communications students. The topic: “Boosting American Prosperity by Creating an Ecosystem of Women and Minority Tech Innovators.” He also spoke at STEM4Us’ 2014 inaugural event as well. In addition, Mr. Reed speaks annually at MMTC’s Broadband and Social Justice Summit and

Rainbow PUSH's Telecomm and International Affairs Symposium about broadband and jobs. Both of these annual events focus in part on building a pipeline for minority students in higher education to participate and compete in the communications arena.

Similarly, Director Reed has addressed the National Association for Multi-Ethnicity in Communications, the Congressional Black and Hispanic Caucuses, the Ohio Bar Association, and many others on the importance of attracting minority students to media and communications careers.

OCBO holds annual conferences on supplier diversity, capitalization strategies, and most recently emerging technologies and app development in the minority entrepreneurial community. Representatives from the communications departments at HBCUs such as VSU, Howard University, Bowie State, and Morgan State are notified of these events and encouraged to invite their students to attend.

OCBO also invites organizations like the Latinos in Information Sciences and Technology Association, the National Association of Latino Community Asset Builders, the Asian American Justice Center, the Urban League, The National Black, Hispanic and Asian Chambers of Commerce, and many others to advise their memberships of OCBO events.

Digital inclusion (or closing the digital divide) is a necessary first step in educating diverse and underserved communities about media and communications careers. In this regard, the FCC's "Connect2Compete" initiative is a national private and nonprofit sector partnership created to increase broadband adoption and digital literacy training in disadvantaged communities throughout the United States.

The initiative is designed to help residents improve outcomes in education, health, and employment through broadband opportunities and technology solutions. Providers participating in the Connect2Compete Home Broadband Coverage program are the following: Comcast, Time Warner Cable, Charter, Cablevision, Bright House Networks, Suddenlink, Insight, Midcontinent, GCI, Bend Cable, Mediacom, Eagle Communications, and Sjoborg.

Connect2Compete approached the Ad Council in 2012 seeking help in creating a public service campaign. Because fear and relevancy are two of the main reasons that people are hesitant to use the Internet, the campaign focuses on illustrating how non-adopters can do something better by getting online – whether that means doing their homework, paying their bills, or finding a job.

The "EveryoneOn" campaign was launched in March 2013 and includes television, radio, and digital (mobile and Web) advertisements, as well as a social media campaign designed to recruit volunteers and drive people to learn more at EveryoneOn.org or through the 1-855-EVERY1ON help line.

America's public libraries and other Connect2Compete partner sites are offering free digital literacy training at thousands of locations across the country. Using EveryoneOn.org, digital "newbies" can locate their closest digital literacy training center by entering their ZIP code, or via the toll-free help line and via SMS texting. Digital "savvies" can use the same resources to discover volunteer opportunities in their community. These training programs allow people to

learn basic skills such as how to use a computer, set up email, navigate the Internet, prepare and upload an online resume, and access their health data.

Question: Can you also please describe what steps the Commission has taken to encourage minority employment within the FCC?

The Commission has developed a multi-faceted approach to encouraging minority employment within the FCC. This approach is focused on both applicants and current employees, provides opportunities for enhanced intra-agency communication, and creates an optimal environment for successful mentoring, networking and personal engagement.

With regard to established professionals considering a change in career, FCC staff have attended and actively recruited at association career fairs and organizational conferences. Recently, for example, FCC representatives attended the Hispanic Bar Association Career Fair on April 7, 2016, and the Federal Asian Pacific American Council (FAPAC) Career Fair on April 22, 2016. FCC staff also attended the FAPAC Conference in May of 2015 and the National Bar Association Annual Convention in July of 2015 to promote the benefits of a career with the Commission. Also, the FCC placed employment advertisements in magazines, such as the Black EOE Journal, the Hispanic Network Magazine, and the Professional Woman's Magazine to promote employment within the FCC.

With regard to students considering government and/or communications-based careers, FCC staff have attended local college and university career fairs, such as the National Black Law Students Association Job Fair in Baltimore in March of 2016. We also developed and presented a video for use in places where we lacked funding for travel, featuring staff hired through the "Pathways Program." As you know, this government-wide program offers clear paths to Federal internships for students from high school through post-graduate school and to careers for recent graduates, and provides meaningful training and career development opportunities for individuals who are at the beginning of their Federal service. We recently aired the recruitment video at Texas College in March of 2016, and we were encouraged by its reception.

The FCC also has developed a mentorship program that encourages current employees to meet and receive mentoring from senior employees. Although this program is not only directed at minority employees, it focuses on their needs because a high percentage of minority staff are at the GS-14 and lower grade levels. Accordingly, the mentorship program directly assists minority employees, empowering them to take control of their careers and establish important networking contacts.

In addition to the ongoing mentorship program, the FCC is working with the staff to establish affinity or Employee Resource Groups (ERG) to foster equal opportunity and develop a diverse, inclusive workplace aligned with the Commission's organizational mission, values, and goals. By partnering with these groups (BIG, FAPAC, FEW, Cafecito en Familia, Native Americans, LGBT, Veterans, and Persons with Disabilities), the FCC will create unity and synergy between the groups, supervisors/managers and the union to better promote equal opportunity, diversity and inclusiveness. This unity and synergy should improve promotion opportunities for minorities.

Another way the FCC is encouraging minority hiring is by improving understanding and inclusiveness with regard to persons with disabilities. To improve diversity, understanding and inclusiveness within the FCC involving persons with disabilities, the FCC staff created a web-based disability sensitivity training module in which four FCC Commissioners participated. Moreover, the FCC is using the Special Appointing authorities to hire persons with disabilities. Overall, the Commission has established and institutionalized solid, holistic approaches to recruiting and retaining minority employees, and we will continue to ensure that the Office of Workplace Diversity receives the resources that it needs to create a diverse and productive workplace.

Connect America Fund

The Universal Service Fund is tied to the provision of voice service for rural providers under current rules. In other words, consumers may receive reduced support if they do not purchase “plain old telephone service” along with broadband. I understand that you’re close to finalizing action on an order that would address the standalone broadband issue for smaller rate of return providers.

Question: Can you please provide me with the status of this and can you reassure the Subcommittee that if any further adjustments to the rule are necessary that the FCC will work with us and the affected stakeholders to ensure our constituents are effectively supported by the Universal Service Fund?

Answer: The *Rate-of-Return Reform Order* recently adopted by the Commission was the result of a bipartisan effort, aided by the rate-of-return carriers themselves, to expand rural broadband deployment by modernizing the USF high-cost support program for rate-of-return carriers, including by providing support for standalone broadband. As implementation of the reforms in the Order progresses over the coming month, we will work to ensure that any questions and concerns from Congress, as well as any affected stakeholders, are addressed in a timely manner.

Financial Services and General Government Subcommittee
Hearing on Federal Communications Commission
for Commissioner Ajit Pai

Questions for the Record Submitted by Chairman Ander Crenshaw

Budget

While the Chairman's office is in charge of putting together the budget, I am interested to hear your views on the Commission's FY 2017 request.

Question: Do you have any concerns with the Commission's budget request?

Answer: Yes. I am particularly concerned that the Commission is again requesting a transfer of funds from the Universal Service Fund, that the Commission is proposing to increase spectrum-auction spending to \$124 million, and that the Commission maintains an Office of Media Relations substantially larger than sister agencies like the Federal Trade Commission (FTC).

Question: Where do you think the Commission could do less with less?

Answer: Given the substantial number of activities and rulemakings the Commission is carrying out that are unnecessary and harmful to the American public, I am skeptical that the Commission needs even the funding it got during FY2016. For example, the Commission's misadventures include regulating the Internet through its *Title II Order*, doubling down on the set-top boxes that consumers no longer want, reregulating the special access market that the Clinton Administration deregulated 20 years ago, and second-guessing private arrangements to improve cybersecurity.

In particular, I believe two areas merit additional scrutiny by the Subcommittee. *First*, the FCC's spectrum-auctions budget should be decreasing, not increasing, with the end of the incentive auction. *Second*, the FCC's Office of Media Relations is likely larger than it needs to be—15 FTEs rather than the 10 the FTC has. Shrinking the media budget should curtail the mission creep that we've seen within the FCC over the last couple of years as that office now runs media campaigns designed to influence the votes of FCC Commissioners and preemptively (and inaccurately) sway public opinion.

The Commission is requesting a \$9.5 million transfer from the Universal Service Fund.

Question: Do you think this just a way for the Commission to increase its resources outside of directly increasing regulatory fees?

Answer: Yes. I am disappointed that the Commission is yet again seeking to siphon money from the USF to fund the FCC's work, and I urge this Subcommittee to again reject this proposal. To be sure, the Commission this year is requesting a smaller transfer of \$9.5 million. But the reasons for opposing any diversion of USF funds to the Commission are just as compelling now as they were one year ago. I agree with Chairman Greg Walden of the Subcommittee on Communications and Technology of the House Energy and Commerce Committee that transferring USF funds to the FCC is a "disturbing proposal." And Chairman John Thune of the Senate Commerce Committee has said that it would set "a dangerous precedent." The Commission's authorizers are right: USF funds should be spent across our country closing the digital divide, not at the FCC's headquarters here in Washington, DC.

Auction Funding

Question: Would you care to comment on the Commission's auction administration request?

Answer: I am skeptical of the Commission's proposal to raise spending on the spectrum auctions program to \$124 million. The \$117 million being spent this year is a record, and it's easy to understand why the auctions program is funded at that level. After all, this fiscal year we are holding the world's first incentive auction for spectrum, an enormously complicated endeavor requiring plenty of resources. And included in that budget was \$7.2 million targeted for the Commission's move.

Fiscal Year 2017 should be quite different. The incentive auction will likely be over, and there is no comparable spectrum auction on the horizon for that fiscal year. Even the FY 2017 request for the Commission's move is less—\$4.4 million lower, to be precise. And yet, rather than a substantial decrease, the request for auction spending in FY 2017 is \$7 million higher. It's difficult to understand why.

Let's look, for example, at one of the specific spending increases proposed for the auctions program. The Commission is requesting \$3.58 million and three additional FTEs to implement the Spectrum Pipeline Act of 2015. Why can't this work be handled by current FCC employees and the existing budget? Many FCC staffers have been working on issues related to the forward side of the incentive auction. During the next fiscal year, when the forward auction work will be completed, I'm confident that we could easily reassign three of them to help implement the Spectrum Pipeline Act of 2015.

I would also urge this Subcommittee to examine closely whether reductions can be made from last year's spending. Are there expenses that have been or will be incurred during this fiscal year because of the incentive auction that will not be repeated during Fiscal Year 2017? Can we devote fewer staff resources to the auction program if no major auction will be held? And if the answer to one or both of these questions is yes, shouldn't the amount of funds provided by Congress for the spectrum auctions program be adjusted accordingly?

Incentive Auction

Question: Do you think the 39 month timeline, plus the possibility for waivers, is enough time to repack and move most broadcasters?

Answer: I do not have sufficient information at this time to determine whether 39 months is sufficient for repacking.

Question: Do you have any concerns with this process as it stands now?

Answer: In my view, any decision on whether to maintain or adjust the 39-month timeline for completing the repack should not be made until after the incentive auction has closed because only at that time will we find out how many stations will need to be moved. It is therefore too early to say whether I have concerns with the process as it stands now.

Rate Regulation

Question: Please tell the Committee why you think the concern over the potential for rate regulation is so widespread.

Answer: The concern over rate regulation is so widespread because the FCC has historically meddled in even competitive markets to distort competition and regulate rates, all with the effect of depressing investment. For example, it was not until the early 2000s, when the FCC stayed its hand regarding the rate regulation of new fiber facilities, that carriers began building out fiber to the home in earnest. The potential for new rate regulation accordingly slows down investment in next-generation technologies that could lower costs and raise broadband speeds for all Americans.

Additionally, the FCC's politicization, virtual capture by ideologically extreme special interests, and fact-free decision-making in recent years gives me little confidence that the agency would show restraint when it comes to rate regulation.

Question: Do you believe the Commission will ultimately try to regulate broadband rates? If so, how?

Answer: Yes. After testifying to the Subcommittee that he does not intend to regulate broadband rates, Chairman Wheeler testified to the House Commerce Committee two weeks later that he believes the FCC does have the authority—and should have the authority—to regulate broadband rates. I do not know why he would say this unless he planned to follow through on using that authority. (The fact that the FCC is poised to re-regulate special access in a few weeks—that is, imposing strict price regulations for enterprise broadband rates—makes even clearer where the agency's intentions lie.)

It appears that the FCC intends to follow the same path it did on the Internet conduct standard—maintain unfettered power to declare business models (or rates) highly competitive and innovative one month and start an investigation the next.

Joint Sales Agreements (JSAs)

The 2016 Omnibus Appropriations bill included language to roll back the FCC's Joint Sales Agreement rule for 10 years to ensure that existing broadcast JSAs can continue to operate.

Question: Do you think the Commission should require JSAs to dissolve if there is a license transfer?

Answer: No. Neither the law, FCC precedent, nor common sense requires that result.

Question: Do you think the Commission is acting in accordance with the intent of what Congress passed last year?

Answer: No, among other things, the authors of this statutory language have made it quite clear that the Commission is not acting in a manner consistent with their intent. Moreover, the Commission's decisions and explanations thereof have made quite clear that the agency has no intention of following the law.

Question: What concerns do you have with the Commission's recent actions in this area?

Answer: My foremost concern is that the agency is breaking the law and deliberately subverting the bipartisan will of Congress. I am also concerned that dissolving these JSAs will harm television stations' ability to serve their local communities, particularly in smaller markets.

In last year's appropriations bill, an overwhelming bipartisan majority in Congress passed a law ordering the FCC to grandfather existing JSAs for ten years. How did the FCC respond? It has been using the FCC's merger review authority to force companies to unwind JSAs. One recent example involves my home state of Kansas where the Commission recently required parties to terminate a JSA that allowed Entravision, a Univision affiliate, to provide the only Spanish language news in the Sunflower State. This action was particularly egregious because the FCC Chairman had previously testified to this Subcommittee that this very JSA would not be affected by the Commission's new policy.

So flagrant was the agency's refusal to abide by the statute that 12 Senators, led by Senators Roy Blunt and Dick Durbin, wrote to the FCC, stating that the agency "ignored bipartisan concerns" and "bypass[ed] a bipartisan provision" of the law. They concluded that the FCC "must not use these [merger] reviews to undermine Congress' clear intent to preserve JSAs" previously blessed by the agency.

As noted above, the Chairman's response to these bipartisan concerns makes clear that the Commission has no intention of complying with the law. I urge this Subcommittee to include very specific language in the upcoming appropriations bill requiring the FCC to take such action and would be more than happy to work with the Subcommittee on appropriate language.

Broadband Consumer Privacy Proposal

Recently, the Commission released the Broadband Consumer Privacy Proposal.

Question: Why is the FCC moving forward with proposed privacy rules when the Open Internet Order is still pending in court?

Answer: As a minority commissioner, I have no influence on the setting of the Commission's agenda. I do not know why the Chairman decided to move forward as we await a decision by the courts.

Question: Why not wait until the FCC's proper jurisdiction is determined by the courts, which is expected shortly?

Answer: That is an excellent question. Given the imminence of the expected decision, I do not know why the Chairman chose not to wait.

Question: If the court decides that the FCC lacks the authority to reclassify broadband as a Title II service, then how would such a decision affect the privacy proposal?

Answer: The proposed privacy rules likely would fail if the court decides the FCC lacks authority to reclassify broadband as a Title II service.

Chairman Wheeler has stated that the FCC does not have jurisdiction over so-called "edge providers" like Google and Apple and that they will continue to be under the jurisdiction of the Federal Trade Commission (FTC), however, this new privacy rulemaking will focus only on Internet Service Providers (ISPs).

Question: How will the FCC prevent an uneven regulatory playing field in the marketplace when it comes to privacy?

Answer: The FCC's proposed rules are inconsistent with the FTC's rules and will inevitably distort the marketplace to favor some service providers over others. That's one reason I dissented from the FCC's proposed rulemaking.

I would note as well that the FCC's proposed rules violate the Chairman's unqualified commitment before the House Energy and Commerce Committee's Subcommittee on Communications and Technology in November 2015: because consumers have a "uniform expectation of privacy," the FCC "will not be regulating the edge providers differently" from ISPs.

The privacy proposal would require ISPs to obtain opt-in consent to share consumer information with third parties.

Question: Do any other companies in the Internet ecosystem have such a requirement?

Answer: I am not aware of any federal rule that would require such providers to obtain opt-in consent before any consumer information could be shared with third parties.

Question: Should other companies in the Internet ecosystem have such a requirement?

Answer: In the absence of evidence that the FTC's rules have failed to protect consumer privacy, I am skeptical that additional regulation is necessary at all and that there is a need to go beyond the FTC's privacy framework for any participants in the Internet ecosystem.

Universal Service Fund (USF)

The Commission recently circulated a proposal to expand the Universal Service Fund Lifeline program to include broadband access and the Commission is likely to vote on this at the end of this month. I know you have concerns about the expansion of this program.

Question: Please tell the Committee why you are not supportive of the Chairman's proposal. Are there cost-effective alternatives?

Answer: My approach to the Lifeline proceeding has been guided by two fundamental principles. First, modernizing the Lifeline program to support affordable, high-speed Internet access for our nation's poorest families is a worthy goal. And second, we must be fiscally responsible and clean up the rampant waste, fraud, and abuse in the program so that the dollars we spend go to those families.

Consistent with these principles, I could not support the Chairman's proposal. It is not fiscally responsible—it foretells a 50% jump in spending (from \$1.5 billion to \$2.25 billion per year) with no enforceable budget to prevent spending from going higher. It does not clean up the waste, fraud, and abuse. And it consigns Lifeline consumers to second-class broadband services for the foreseeable future. On top of this, the Order does not comply with federal law.

Question: How is the proposal different than Connect America Fund (CAF) or the High Cost Fund under USF?

Answer: Lifeline is the only program within the Universal Service Fund that remains without an enforceable budget. I support a budget because it forces the government to think about how it spends taxpayer money, to be prudent, and to highlight the importance of cutting out waste, fraud, and abuse.

Question: Does the Commission's proposal include a top line budget for the Lifeline program? If not, why?

Answer: The Commission did not adopt a budget. It instead included a reporting mechanism. So if payments exceed a threshold (\$2.025 billion) in 2017, a report is supposed to issue in 2018 and the FCC might act on that report by 2019. That's no way to protect the American taxpayer.

As for why a budget wasn't included as part of these reforms, the answer is straightforward. On March 31, a bipartisan majority of the Commission (including myself) struck an agreement to include an enforceable budget as part of Lifeline reform. Unfortunately, the Chairman and his staff successfully scuttled that agreement, in part by leaking nonpublic information to the press and encouraging outside allies to pressure a Democratic commissioner party to that agreement. She ultimately reneged on the agreement and signed on to the Chairman's fiscally irresponsible approach.

Question: How does the FCC intend to keep costs within this program from ballooning?

Answer: The proposal does not propose any means to keep costs within this program from ballooning.

Question: How can the FCC and USF best encourage and support broadband expansion to low income Americans?

Answer: I believe breaking down the regulatory barriers to investment is the best way to support broadband expansion among low-income Americans because it spurs competitive entry and makes broadband services more affordable for all Americans, not just those below who are willing to jump through government-defined hoops to participate in a government subsidy program. Universal service, in turn, has its place in making broadband more affordable for non-adopters.

Questions for the Record Submitted by Congressman Yoder***Broadband Speed Testing***

Commissioner Pai, since 2010, the Commission has paid more than \$3.1 million to SamKnows, a UK-based company, to assist the Commission in the development of a broadband speed testing program and application.

I asked Chairman Wheeler, was the contract with SamKnows bid competitively, and if there are US-based companies capable of offering the same service you are buying from SamKnows. I await his response in an answer for the record.

Question: Commissioner Pai, do you believe it is a necessary and wise expenditure of FCC resources for the FCC to create its own broadband speed tracking app, or do you trust that sufficient and potentially more recent information about broadband speeds is available from reliable private sector sources?

Answer: Although I have not specifically looked private broadband speed tracking apps, I am generally skeptical of the FCC spending taxpayer funds to replicate services already available in the private sector.

Question: Commissioner Pai, given that there are indeed a multitude of private sector entities that measure and report on broadband speed, why can't the FCC rely on the private sector to track speeds rather than creating its own "tool" to do so?

Answer: Although I have not specifically looked into private broadband speed tracking apps, I share your concern and believe the FCC should rely on private sector alternatives that cost the taxpayer nothing whenever available.

Universal Service Payments

Chairman Wheeler asked for a \$1.6 million increase to acquire new analytic technology to identify improper payments from the Universal Service Fund.

Question: Is the basis for this request a belief that there is a systemic problem with improper payments from the USF? If so, how large a problem do you believe this is? And if not, why do you need this additional money?

Answer: There are several reasons to believe that American taxpayers are losing millions of dollars to waste, fraud, and abuse in the Universal Service Fund. Just recently, for example, the Commission released a Notice of Apparent Liability highlighting systematic abuse of the Lifeline program.

Unfortunately, I have received no evidence whatsoever that this requested budgetary increase will actually be useful in preventing improper payments. As highlighted by that very same Notice of Apparent Liability, the FCC knew that systematic fraud was occurring back in November 2014, but agency leadership chose to sit on its hands until April 2016 (conveniently, one day after forcing a vote to dramatically expand the program), allowing the company at issue to collect another \$40 million from the American taxpayer. The FCC is falling down on the job, and it has nothing to do with the budget.

Universal Service Fund Transfer

Question: Do you believe it is wise to permit the Commission to repurpose Universal Service Fund monies to support general FCC operations, as has been proposed in Chairman Wheeler's budget?

Answer: No. I am disappointed that the Commission is yet again seeking to siphon money from the USF to fund the FCC's work, and I urge this Subcommittee to again reject this proposal. To be sure, the Commission this year is requesting a smaller transfer of \$9.5 million. But the reasons for opposing any diversion of USF funds to the Commission are just as compelling now as they were one year ago. I agree with Chairman Greg Walden of the Subcommittee on Communications and Technology of the House Energy and Commerce Committee that transferring USF funds to the FCC is a "disturbing proposal." And Chairman John Thune of the Senate Commerce Committee has said that it would set "a dangerous precedent." The Commission's authorizers are right: USF funds should be spent across our country closing the digital divide, not at the FCC's headquarters here in Washington, DC.

Questions for the Record Submitted by Congresswoman Jaime Herrera Beutler

Universal Service Fund

I understand that you're close to finalizing action on an order that would address the standalone broadband issue and also adopt some new limits and other measures related to universal service support for smaller rate of return providers. For all of the small companies in my district, the ACAM model is not a viable option, and the Rate of Return option has not yet been fully defined.

Question: Does this Committee have the commitment of the FCC Commissioners to work quickly and collaboratively with us and with affected stakeholders to the extent any adverse or unintended consequences arise out of the reforms?

Answer: Yes. I too am concerned that the agency's latest revisions to the support mechanisms for rate-of-return carriers will have unintended or adverse consequences, which is precisely why I had asked that the public be able to review that order before it was voted. Unfortunately, the Chairman denied my request. And I dissented in part precisely because I saw serious flaws in the reforms—flaws I hope to correct in collaboration with you and other members of Congress.

Question: Please describe in detail how the standalone broadband solution you're poised to adopt will allow rural consumers to get standalone broadband at affordable rates like their urban counterparts?

Answer: I am not sure that this solution will work, primarily because it is extremely complex. For instance, to calculate the support provided by the FCC's solution, a carrier must (1) determine the historical costs of providing broadband-only loops (defined "on a per-line basis, as the costs that are currently recoverable for a voice-only or voice/broadband line in ICLS"), (2) apply the new limits on operating expenses, (3) apply the old limits on corporate operations expenses, (4) apply the new limits on capital expenses, and (5) subtract an imputed charge of up to \$42 per broadband-only loop to determine the initial support amount. A carrier then must (6) disaggregate support for noncompetitive areas using one of four separate methods, (7) add back a portion of the disaggregated support for competitive areas during a transition period, (8) subtract a per-line budget reduction, (9) apply a pro rata budget reduction, (10) apply the monthly per-line limit on universal service support, if applicable, and (11) subtract the difference between that carrier's old Interstate Common Line Revenue Requirement and what would have been its Interstate Common Line Support (ICLS) after applying these reforms.

I cannot pretend to understand how this will all work out in practice. But I do know that it's not as simple as the one-page plan I proposed last June—a plan consistent with an overwhelming, bipartisan direction from Congress and supported by wide swaths of industry stakeholders.

Question: How do we make sure ultimately those rural consumers are paying roughly the same rates as urban consumers regardless of whether its voice or broadband they want?

Answer: I believe that targeted changes to our existing accounting rules would have had a better chance of accomplishing that goal, and we may need to revisit the recently adopted reforms to take that approach.

In the meantime, we should repeal the "rate floor" that the Commission adopted in 2011 (before I arrived). The rate floor requires rural carriers to raise their telephone rates above some urban rates and diverts universal service funds away from investment in high-speed networks. The rate floor hurts rural consumers without helping anyone. It makes no sense.

Question: What impact will these changes have on Rate of Return carriers in terms of overall USF support?

Answer: The adopted order maintains the existing budget for rate-of-return carriers, but redistributes it to those carriers best able to game the regulatory system. I am skeptical this is what's best for rural America.

I have heard concerns that the 2014 Order used to determine the local rate floor for voice service has led to higher rates for some rural consumers in my district that are now higher than urban areas. Plus, rural customers have a much smaller local calling area than their urban counterparts, which creates an immediate disparity.

Question: Given this concern, do you plan to act on the petition of reconsideration filed by several rural associations regarding the rate floor methodology?

Answer: As a minority commissioner, I do not set the agenda for the agency. But I have repeatedly stated my view that the rate floor should be repealed altogether.

Question: Do any other Commissioners have thoughts regarding this matter?

Answer: I have not canvassed my colleagues on this topic, but it is fair to say that the Chairman does not share my view given that he declined my request to overturn the rate floor when we revisited the issue two years ago.

Universal Service Fund

Last year, the FCC increased the USF budget devoted to the E-Rate program by \$1.5 billion for a total of \$3.9 billion. The FCC recently proposed increasing the spending for the Lifeline program from \$1.6 billion to \$2.25 billion indexed to inflation. Right now, the additional spending is coming from a reserve fund, but that will run out soon. Funding for the High Cost fund, which builds networks, in rural areas has been flat.

Question: Where does the FCC expect to get the funds to cover this increase in spending and how can we know the program is both effective and efficient?

Answer: Unless Congress acts, the money to fund all of this spending will come from a broadband tax. The only question is when. Thus far, all we've been told is that no decision on broadband taxes will be made until after the D.C. Circuit decides whether the FCC's regulations are legal. But given that the FCC hasn't refused to generally delay enforcing utility-style regulation until after the legal challenge is resolved (and strongly opposed this Subcommittee's effort to bring about that result last year), one might reasonably suspect that the decision is conveniently being put off until after the November elections. After all, making people pay more to access the Internet isn't going to be popular.

Congress should not let the FCC impose a broadband tax in the stealthy darkness of the next Washington winter. Earlier this year, on a bipartisan basis, Congress overwhelmingly passed the Permanent Internet Tax Freedom Act, which made permanent the ban on state and local taxation of Internet access. Having thus protected consumers' pockets, it would be quite unfortunate if Congress allowed the FCC to pick them with a nationwide broadband tax.

Video

Question: Does the technology currently exist in the marketplace to meet any proposed mandate to “open” the set top box?

Answer: The Commission’s proposal would require MVPDs to supply certain information in “formats that conform to specifications set by ‘open standards bodies.’” These open standards bodies, in turn, would consist of members representing all stakeholders and supposedly would develop these standards by consensus. However, no such consensus standards currently exist. Therefore, it is impossible to know whether the technology currently exists in the marketplace to make information available in a manner consistent with these nonexistent specifications.

Question: If so, how much does that technology cost and who bears those costs?

Answer: Given that the relevant standards have yet to be established, I do not know how much the technology to implement them will cost. I am confident, however, that those costs will end up falling on the shoulders of American consumers, just as the costs associated with implementing the integration ban resulted in higher cable bills.

Question: If not, how much will it cost to develop and implement?

Answer: Given that the relevant standards have yet to be established, it is difficult to estimate the cost. However, it appears as though MVPDs would have two choices for implementing them. First, it could reconfigure its network, which I am told would be very expensive. Or second, it could provide a second box to its customers. Thus, under the Commission’s proposal, Americans could end up paying for yet another box.

Question: Under your set top box plan, who will police copyright and licensing requirements for new set top box providers?

Answer: For certain licensing terms, such as the treatment of advertising and channel placement, the FCC proposes to leave those issues up to “marketplace forces.” For other licensing terms and copyright requirements, such as limits on copying and recording content, the FCC proposes a vicarious enforcement scheme where MVPDs would only provide the required “information flows” to set-top box manufacturers that have licensed an appropriate content protection system. I am extremely skeptical that either of these methods will prove to be effective in protecting the rights of content creators. But because the FCC lacks direct authority over set-top box manufacturers, the Commission does not have good options in this area if it chooses to go forward with its flawed set-top box proposal.

The FCC was directed in Satellite Television Extension Act Reauthorization (STELAR) to review the good faith standard for negotiating retransmission consent agreements. I understand the FCC has an open proceeding and a number of parties commented on specific questionable broadcast negotiating tactics that unnecessarily drive up costs for rural consumers, small providers and new entrants.

Question: Where does that proceeding stand?

Answer: Last September, the Commission adopted a Notice of Proposed Rulemaking to seek comment on the good faith standard for negotiating retransmission consent agreements. Parties submitted comments responding to the NPRM in early December, and reply comments were filed in the middle of January.

Question: Are there tactics egregious enough to be considered per se bad faith?

Answer: Yes, to date the Commission has identified nine such negotiating tactics. For example, it is *per se* bad faith for either party to refuse to offer more than a single, unilateral proposal during the course of negotiations.

Outside Witness Testimony



Anthony M. Reardon
National President
National Treasury Employees Union

Statement for the Record

For

**House Appropriations Subcommittee on Financial Services
and General Government**

“Internal Revenue Service Budget Request for FY 2017”

February 11, 2016

Chairman Crenshaw, Ranking Member Serrano and distinguished members of the subcommittee, I would like to thank you for allowing me to provide comments on the IRS budget request for FY 2017. As President of the National Treasury Employees Union (NTEU), I have the honor of representing over 150,000 federal workers in 31 agencies, including the men and women at the IRS.

Mr. Chairman, NTEU strongly supports the Administration's FY 2017 budget request of \$12.28 billion for the IRS, an increase of more than \$1 billion above the current FY 2016 level. We are particularly pleased the Administration's request would provide the IRS with the additional resources necessary to restore customer service levels that have fallen in recent years due to funding cuts totaling \$1.2 billion, and to begin rebuilding its depleted workforce which is down more than 18,000 since FY 2010. Without this additional funding, the IRS' ability to serve taxpayers and enforce our nation's tax laws will continue to erode.

Taxpayer Services

Providing quality customer service to the taxpayer is an important part of IRS efforts to help the taxpaying public understand their tax obligations while making it easier to comply. Unfortunately, the IRS' ability to provide excellent taxpayer service has been severely challenged due to reduced funding in recent years and the cuts mandated by sequestration. Without additional resources, further degradation in taxpayer services will occur, jeopardizing our voluntary compliance system.

Impact of Funding Reductions on IRS Taxpayer Services

Mr. Chairman, funding reductions in recent years have had a devastating impact on IRS' ability to provide taxpayers, including victims of identity theft, with the service they need in a timely manner. Since FY 2010, the IRS has absorbed \$1.2 billion in cuts despite the fact that they are handling more than 10 million additional tax returns a year, and the number and complexity of tax refund fraud cases is on the rise. The funding cuts have resulted in a reduction of about 34 percent in the number of assistants answering telephone calls between fiscal years 2010 and 2015 and contributed to the lowest level of telephone service in fiscal year 2015 compared to recent years. In addition, reduced funding forced the IRS to implement a number of service initiatives during FY 2015 that included reducing or eliminating certain telephone and walk-in services, and redirecting taxpayers toward other service channels such as IRS's website.

In a recent letter to Congress, the IRS highlighted some of the adverse impacts these reductions had on the IRS' ability to deliver taxpayer services during the most recent filing season. These include:

- A reduction in the percentage of callers seeking live assistance who received it (telephone level of service) to 38 percent,—down from 74 percent in FY 2010.

- Taxpayers waiting about 23 minutes on average for an IRS representative to get on the line, with more than 60 percent of calls going answered. This represents a sharp decline from 2010, when the IRS answered three-quarters of calls and had an average wait time of just under 11 minutes.

- The IRS was not able to answer any tax-law questions except “basic” ones during the last filing season, and now it will not answer any tax-law questions at all, leaving the roughly 15 million taxpayers who file later in the year unable to get answers to their questions by calling or visiting IRS offices.

- The IRS historically has prepared tax returns for taxpayers seeking its help, particularly for low income, elderly, and disabled taxpayers. Eleven years ago, it prepared some 476,000 returns. That number declined significantly over the past decade, and last year the IRS announced it will no longer prepare returns at all.

In addition, as a result of budget cuts, the IRS was forced to reduce staff devoted to face-to-face assistance at walk-in sites by about 4 percent in FY 2015 compared to the previous year, and directed customers to self-service options. However, the percentage of customers at walk-in sites waiting for longer than 30 minutes for service increased by 7 percentage points in fiscal year 2015 (from about 25 to 32 percent) during the same period.

The importance of providing taxpayers with timely assistance over the phone or in person is of particular importance for victims of identity theft and other types of tax refund fraud. These cases are extremely complex cases to resolve, frequently touching on multiple issues and multiple tax years and the process of resolving these cases can be very frustrating for victims.

While the IRS has made considerable progress in this area, additional work remains. Fighting identity theft is an ongoing battle as identity thieves continue to create new ways of stealing personal information and using it for their gain. Therefore, it is critical that the IRS has the resources and staffing necessary to prevent refund fraud from occurring in the first place, investigate identity theft-related crimes when they do occur and help taxpayers who have been victimized by identity thieves as quickly as possible.

That is why NTEU strongly supports the President’s request of \$2.4 billion in funding for taxpayer services in FY 2017. This funding will allow the IRS to increase the telephone level of service to 70 percent, provide assistance to victims of identity theft in a timely manner, and help taxpayers understand their obligations, correctly file their returns, and pay taxes due in a timely manner.

Mr. Chairman, it is evident that drastic funding reductions in recent years have seriously eroded the IRS’ ability to provide taxpayers with the services they need. Without the additional funding proposed in the Administration’s budget request, taxpayers will continue experiencing a degradation of services, including longer wait times to receive assistance over the telephone, increasing correspondence inventories, including letters from victims of identity theft and taxpayers seeking to resolve issues with taxes due or looking to set up payment plans.

Enforcement

Mr. Chairman, NTEU believes a strong enforcement program that respects taxpayer rights, and minimizes taxpayer burden, plays a critical role in IRS' efforts to enhance voluntary compliance, combat the rising incidence of identity theft and reduce the tax gap.

Impact on Efforts to Reduce the Federal Deficit

Unfortunately, funding reductions in recent years are undermining IRS' ability to maximize taxpayer compliance, prevent tax evasion and reduce the deficit. The adverse impact of insufficient funding on IRS' capacity to collect revenue critical to reducing the federal deficit is clear. In FY 2015, on a budget of \$10.9 billion, the IRS collected \$3.3 trillion, roughly 93 percent of federal government receipts. According to the IRS, every dollar invested in IRS enforcement programs generates roughly \$6 in increased revenues, but reduced funding for enforcement programs in recent years has led to a steady decline in enforcement revenue since FY 2007. In FY 2015, IRS enforcement activities brought in \$54.2 billion, down \$5 billion from the \$59.2 billion of FY 2007.

The reduction in revenue can be partly attributed to a reduction in the total number of IRS enforcement personnel, including revenue agents and employees in the correspondence audit program, which have limited the IRS' impact on voluntary compliance. The number of revenue agents fell seven percent from 11,422 to 10,657 in FY 2015, the lowest it has been since before 2005, when there were 20 million fewer taxpayers, while reduced staffing in the correspondence audit program resulted in the roughly 16,000 fewer case closures and potentially \$75 million in lost revenue.

Without sufficient staffing to effectively enforce the law to ensure compliance with tax responsibilities and combat fraud, our voluntary tax compliance system is at risk. And as the IRS Commissioner has repeatedly noted, a simple one-percent decline in the compliance rate translates into \$30 billion in lost revenue for the government.

Sufficient enforcement staffing is also critical if the IRS is to make further progress on closing the tax gap, which is the amount of tax owed by taxpayers that is not paid on time. According to the IRS, the amount of tax not timely paid is \$450 billion, translating to a noncompliance rate of almost 17 percent.

While the tax gap can never be completely eliminated, even an incremental reduction in the amount of unpaid taxes would provide critical resources for the federal government. At a time when Congress is debating painful choices of program cuts and tax increases to address the federal budget deficit, NTEU believes it makes sense to invest in one of the most effective deficit reduction tools: collecting revenue that is owed, but hasn't yet been paid.

That is why NTEU was happy to see the Administration's budget request would provide a \$587 million increase in funding for IRS tax enforcement above the current level. This increase includes a program integrity cap adjustment totaling \$515 million which supports the enforcement (\$231 million) and operations support accounts (\$283 million). This additional

funding is designed to restore enforcement of current tax laws to acceptable levels, investigate transnational organized crime, pursue abusive tax schemes and enforce the new Foreign Account Tax Compliance Act (FACTA). According to the Administration, the additional funding provided via the cap adjustment is expected to generate more than \$2.6 billion in additional annual enforcement revenue, resulting in a return on investment (ROI) of more than 6 to 1, once new hires reach full potential in FY 2019. According to the Administration, the \$515 million cap adjustment will help generate \$46 billion in net savings over the next 10 years. This estimate does not account for the deterrent effect of IRS enforcement programs, estimated to be at least three times larger than the direct revenue impact.

CONCLUSION

Mr. Chairman, thank you for the opportunity to provide NTEU's views on the Administration's FY 2017 budget request for the IRS. NTEU believes that only by restoring critical funding for effective enforcement and taxpayer service programs can the IRS provide America's taxpayers with quality service while maximizing revenue collection that is critical to reducing the federal deficit.



1401 H Street, NW, Washington, DC 20005-2148, USA
202/326-5800 www.ici.org

**STATEMENT OF PAUL SCHOTT STEVENS
PRESIDENT AND CEO
INVESTMENT COMPANY INSTITUTE
ON THE U.S. SECURITIES AND EXCHANGE COMMISSION'S
APPROPRIATIONS FOR FISCAL YEAR 2017**

**Subcommittee on Financial Services and General Government
Committee on Appropriations
U.S. House of Representatives**

March 29, 2016

The Investment Company Institute¹ appreciates this opportunity to submit testimony to the Subcommittee relating to the Administration's FY 2017 Appropriations request for the Securities and Exchange Commission (SEC). In the past, the Subcommittee has consistently sought to provide adequate resources for the SEC. For the reasons expressed below, we urge it to do so again this year.

Importance of a Well-Funded and Effective Securities Regulator for Funds and Their Investors

Registered investment companies (RICs, or "funds")² are one of America's primary savings and investment vehicles for middle-income Americans. All told, an estimated 90.9 million shareholders in 53.6 million U.S. households owned some type of registered fund in 2015.³ At year-end 2015, total

¹ The Investment Company Institute (ICI) is a leading, global association of regulated funds, including mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States, and similar funds offered to investors in jurisdictions worldwide. ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. ICI's U.S. fund members manage total assets of \$16.9 trillion and serve more than 90 million U.S. shareholders.

² Fund sponsors offer four types of registered investment companies in the U.S.—open-end investment companies (commonly called "mutual funds"), closed-end investment companies, ETFs, and UITs.

³ See Burham, Kimberly, Michael Bogdan, and Daniel Schrass, "Ownership of Mutual Funds, Shareholder Sentiment, and Use of the Internet, 2015," ICI Research Perspective 21, no. 5 (November); available at www.ici.org/pdf/per21-05.pdf.

RIC assets were \$18.1 trillion. These funds, and their millions of investors, benefit from an effective SEC.

RICs are an integral part of our economy in other ways, as well. In addition to their role as the investment vehicle of choice for millions of Americans, RICs have been important investors in the capital markets. As participants in the stock, bond, and money markets, RICs and their shareholders benefit from the SEC's ability to provide strong regulatory oversight of these markets in order to protect investors, promote confidence in our markets, and ensure their resiliency and vibrancy.

Increasing Importance of the SEC's Domestic and International Engagement and Perspective in Financial Regulatory Policy Discussions

The SEC has engaged in joint rulemaking with other domestic regulatory agencies (including banking regulators) and is an active participant in domestic bodies such as the Financial Stability Oversight Council (FSOC) and international bodies such as the International Organization of Securities Commissions (IOSCO) and the Financial Stability Board (FSB). Because other domestic and international regulatory activity increasingly affects funds, SEC engagement with these bodies is more important than ever. The SEC's collaboration with its counterparts can help minimize costly and inappropriate regulations, enhance regulatory consistency, and promote better market oversight and investor protection. Moreover, as the world's financial regulators, finance ministries, and central banks debate and seek consensus on the standards and principles that will govern the international financial system, the SEC as the world's leading capital markets regulator must have a strong and effective voice. Policy discussions about how to strengthen the stability of the financial system and increase its resilience to future shocks provide a compelling example. Since the 2008 global financial crisis, U.S. and global regulators and international bodies such as IOSCO and the FSB increasingly have focused

on identifying and mitigating risks to the financial system at large. The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) created the FSOC—on which the SEC Chair serves as a voting member—for this purpose. Notwithstanding the SEC’s involvement, the membership of both the FSB and FSOC is heavily tilted toward banking regulators. As a result, there is an unfortunate tendency for those members to view the entire financial system through the lens of their “safety and soundness” concerns and their experience with banks and bank-type regulation. This, in turn, makes it altogether likely that these bodies may advance policy initiatives without sufficient understanding of or due regard for the way in which the capital markets operate and are regulated, or of how financial institutions other than banks are structured, operated, and currently regulated. The resources of an expert capital markets and securities regulator such as the SEC need to be bolstered so it is well-positioned to provide relevant information, perspective, and balance to these policy discussions.

To the extent that bodies like FSOC or FSB, after careful review and analysis, identify demonstrable risks related to the activities of funds, then the SEC is the regulator best equipped to address them. The SEC is currently working on an ambitious five-part reform package designed to enhance risk monitoring and regulatory safeguards for the asset management industry. To date, the SEC has issued proposals that would (i) modernize and enhance reporting requirements for funds and registered investment advisers (“advisers”); (ii) require mutual funds and ETFs to adopt liquidity risk management programs; and (iii) regulate funds’ use of derivatives. The SEC staff is working on proposals that would (i) require annual stress testing by large funds and advisers, as the Dodd-Frank Act

requires; and (ii) require advisers to create transition plans to prepare for the winding down of their businesses or similar business disruptions.⁴

While it moves this reform package forward, the SEC is pursuing additional rulemaking that would affect funds. For instance, the SEC has proposed a new rule that would permit website transmission of mutual fund shareholder reports, and it is taking steps to update and modernize its regulations governing transfer agents, key service providers for funds.

Careful execution of this complex regulatory agenda will require the SEC staff to undertake in-depth analysis needed to assure itself that it can meet its regulatory objectives (including improving the SEC's ability to monitor risk) without imposing undue burdens on funds and exposing their investors (or capital markets and their participants generally) to unintended harm. Moreover, in connection with any enhanced data reporting proposal (or the reporting to the SEC of any other non-public information), it will be critical for the SEC to have proper information security controls in place, to protect and maintain the confidentiality of this highly sensitive and valuable information. The SEC's resources need to be adequate to meet these important objectives.

Fulfilling New Regulatory Mandates Should Not Take Priority Over Core Functions

Congress must remain highly attentive to addressing annual budget deficits and levels of federal indebtedness. Nonetheless, it also must take care to provide the SEC the resources the agency needs to successfully conduct its investor protection and market oversight functions and to promote financial stability. As the Subcommittee is aware, the Dodd-Frank Act gave the SEC significant new or

⁴ See, e.g., Chairman's Address at SEC Speaks, Chair Mary Jo White, "Beyond Disclosure at the SEC in 2016," (Feb. 19, 2016), available at www.sec.gov/news/speech/white-speech-beyond-disclosure-at-the-sec-in-2016-021916.html.

expanded regulatory authority over securities-based derivatives, private fund advisers, credit rating agencies, municipal advisors, and clearing agencies. In recent testimony, SEC Chair White noted that while the SEC had proposed or adopted nearly all of the mandatory rulemakings required by the Dodd-Frank Act and the Jumpstart Our Business Startups Act (JOBS Act), “challenges remain if we are to be successful in addressing the growing size and complexities of the securities markets and fulfill the SEC’s broad mandates and responsibilities.”⁵

Although ICI is not in a position to comment on specific funding levels, we appreciate and share this important concern. Fulfilling new regulatory mandates should not come at the risk of impairing the SEC’s pre-existing responsibilities with respect to the fund industry, nor compromising the interests of their millions of mainstream investors. Aside from its mandatory rulemaking, the SEC staff’s ongoing responsibilities to investors and the fund industry include, among others: discretionary rulemaking; reviewing funds’ registration statements and material amendments thereto, certain preliminary proxy statements, and accounting statements; providing legal guidance through interpretive and no-action letters, interpretive releases, memoranda, and other letters and materials; and reviewing applications from entities that request exemptions from certain statutory provisions and granting those that are consistent with investor protection. These functions should not be compromised due to competing priorities or funding constraints.

⁵ Chair Mary Jo White, “Testimony on the Fiscal Year 2017 Budget Request of the U.S. Securities and Exchange Commission,” before the Subcommittee on Financial Services and General Government, Committee on Appropriations, United States House of Representatives (Mar. 22, 2016), available at www.sec.gov/news/testimony/testimony-white-sec-fy-2017-budget-request.html.

The Need for an Efficient and Expert Regulator

No matter what level of funding Congress ultimately authorizes, the SEC must utilize the resources it receives to their maximum effect. In this regard, the SEC deserves credit for its efforts to develop, improve, and increase the use of the agency's economic research and analytical capabilities, in particular through the enhancement of the Division of Economic and Risk Analysis (DERA). DERA's contributions and involvement should help bring additional focus, rigor, and consistency to the SEC's consideration of the economic consequences of its rulemaking activity.

DERA and other SEC divisions, notably the Division of Investment Management, also have made progress in hiring staff with specialized expertise and experience. These staff members should help the SEC better inform itself about the industry and markets that it regulates, as well as the economic consequences of its regulations. Funding levels should support the continuation of these types of activities and improvements.⁶

Conclusion

Congress must assure that the SEC has resources sufficient to fulfill its mission of protecting the nation's investors, including the nearly 91 million investors who own shares of mutual funds and other RICs. These investors deserve the benefits of an SEC that can soundly and effectively regulate securities offerings, market participants, and the markets themselves and promote financial stability.

Accordingly, we urge Congress to provide the appropriations necessary to allow the SEC to appropriately fulfill its vitally important missions. We appreciate your consideration of our views.

⁶ The SEC's FY 2017 budget request identifies "expanding staff expertise" through both hiring and training as a key performance goal.

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